

ACTION: Notice of Final Court Decision and Amended Final Results of Antidumping Duty Administrative Review: Canned Pineapple Fruit from Thailand.

SUMMARY: On September 15, 2003, the United States Court of International Trade (CIT) affirmed the Department of Commerce's redetermination on remand of the final results of the fifth administrative review of the antidumping duty order on canned pineapple fruit from Thailand. See *Maui Pineapple Company, Ltd. v. United States*, Slip Op. 03-120 (September 15, 2003), Court No. 01-01017 (*Maui Pineapple*). Consistent with the decision of the United States Court of Appeals for the Federal Circuit (Federal Circuit) in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), on October 1, 2003, the Department of Commerce (the Department) notified the public that *Maui Pineapple* and the CIT's earlier opinion in this case were "not in harmony" with the Department's original results. See *Notice of Decision of the Court of International Trade: Canned Pineapple Fruit from Thailand*, 68 FR 56619 (October 1, 2003) (*Notice of Decision*). No party has appealed the CIT's decision within the 60-day time period provided and the Department is now issuing these amended final results reflecting the CIT's decision.

EFFECTIVE DATE: December 22, 2003.

FOR FURTHER INFORMATION CONTACT: David Layton or Charles Riggall, Office 5, Group II, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0371 and (202) 482-0650, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 17, 2001, the Department published a notice of the final results of the fifth administrative review of canned pineapple fruit from Thailand. See Notice of Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review in Part: Canned Pineapple Fruit From Thailand, 66 FR 52744 (October 17, 2001) (Final Results). Maui Pineapple Company, Ltd. filed a lawsuit challenging these results and the CIT issued an Order and Opinion dated April 16, 2003 remanding two issues to the Department. See *Maui Pineapple Company, Ltd. v. United States*, 264 F.Supp.2d 1244 (CIT 2003) (September

15, 2003). Pursuant to the CIT's April 16, 2003 Order and Opinion, the Department filed its remand results on June 16, 2003. On September 15, 2003, the CIT affirmed the Department's final results of redetermination in Maui Pineapple. On October 1, 2003, the Department published the Notice of CIT Decision consistent with the Federal Circuit decision in *Timken*. The time period for appealing the CIT's decision has expired and no party has appealed the CIT's affirmation of the Department's final results of redetermination.

Amendment To Final Determinations

Pursuant to section 516A(e) of the Tariff Act of 1930, as amended, as there is now a final and conclusive court decision, we are now amending the final results of the antidumping duty administrative review to reflect a revised weighted average margin for Dole Food Company, Dole Packaged Foods and Dole Thailand (collectively, Dole). See *Final Results*. We determine that the following revised weighted-average margin exists for Dole for the period of July 1, 1999 through June 30, 2000 :

Manufacturer/Exporter	Margin (percent)
Dole	0.98

Accordingly, the Department will determine and the U.S. Customs and Border Protection (CBP) will assess appropriate antidumping duties on the relevant entries of subject merchandise covered by the review period listed above. The Department will issue appraisement instructions directly to the CBP within 15 days of the publication of this notice.

Dated: 15, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-855]

Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China: Final Results and Partial Rescission of the 2001-2002 Administrative Review, and Final Results of the New Shipper Review.

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

ACTION: Notice of Final Results and Partial Rescission of the 2001-2002 Administrative Review, and Final Results of the New Shipper Review.

SUMMARY: We have determined that sales of certain non-frozen apple juice concentrate from the People's Republic of China were not made below normal value during the period June 1, 2001, through May 31, 2002. We are also rescinding the review, in part, in accordance with 19 CFR 351.213(d)(3).

Based on our review of comments received and a reexamination of surrogate value data, we have made certain changes in the margin calculations for all of the reviewed companies. The final weighted-average dumping margins for these firms are listed below in the section entitled "*Final Results of Review*." Changsha Industrial Products & Minerals Import and Export Co., Ltd. did not respond to the Department's questionnaire and will receive the facts available rate. See "*Use of Fact Otherwise Available*" section, below. Based on these final results of review, we will instruct U.S. Customs and Border Protection to assess antidumping duties based on the difference between the export price and normal value on all appropriate entries.

EFFECTIVE DATE: December 22, 2003.

FOR FURTHER INFORMATION CONTACT:

Audrey Twyman, Stephen Cho, or John Brinkmann, Group 1, Office I, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 482-3534, (202) 482-3798, and (202) 482-4126, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 7, 2003, the Department published the preliminary results of this review of certain non-frozen apple juice concentrate (≥AJC) from the People's Republic of China ("PRC"). See *Certain Non-Frozen Apple Juice Concentrate From the People's Republic of China: Preliminary Results of 2001-2002 Administrative Review and New Shipper Review, and Partial Rescission of Review*, 68 FR 40244 (July 7, 2003) ("*Preliminary Results*"). The period of review ("POR") is June 1, 2001, through May 31, 2002. This review covers the following producers or exporters (referred to collectively as "the respondents"): Shaanxi Haisheng Fresh Fruit Juice Co., Ltd. ("Haisheng"), SDIC Zhonglu Juice Group Co., Ltd. ("Zhonglu"), Yantai Oriental Juice Co.,

Ltd. ("Oriental"), Sanmenxia Lakeside Fruit Juice Co., Ltd. ("Lakeside"), and Changsha Industrial Products & Minerals Import and Export Co., Ltd. ("Changsha"). On July 26, 2002, Gansu Tongda Fruit Juice and Beverage Company ("Gansu Tongda") agreed to align the new shipper review with the second administrative review; therefore, the concurrent new shipper review covers one producer/exporter: Gansu Tongda.

In September 2003, we conducted verification of the questionnaire responses submitted by Gansu Tongda. We issued a verification report on October 8, 2003.

We invited parties to comment on the *Preliminary Results* and the Verification Report. On October 20, 2003, we received a combined case brief from Haisheng, Zhonglu, Oriental, and Gansu Tongda. No rebuttal briefs were submitted. No hearing was held because respondents withdrew their request for a hearing in a letter dated October 23, 2003.

On October 22, 2003, the Department published in the **Federal Register** a *Notice of Extension of Time Limit for the Final Results of the Second Administrative Review and New Shipper Review*, 68 FR 60338.

The Department has conducted this administrative review and new shipper review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Act").

Scope of Review

The product covered by this order is certain non-frozen apple juice concentrate ("NFAJC"). Certain NFAJC 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.

Rescission of Review in Part

As noted in the *Preliminary Results*, Shandong Foodstuffs Import and Export Corporation ("Shandong"), Shaanxi Gold Peter Natural Drink Co., Ltd. ("Gold Peter"), Qingdao Nannan Foods Co., Ltd. ("Nannan"), Shaanxi Machinery and Equipment Import and Export Corporation ("SAAME"), Shaanxi Hengxing Fruit Juice Co., Ltd. ("Hengxing"), Xian Asia Qin Fruit Co., Ltd. ("Xian Asia"), and Xian Yang Fuan Juice Co., Ltd. ("Xian Yang") reported no shipments of subject merchandise to the United States during the POR. Entry data provided by U.S. Customs and Border Protection ("CBP") confirm that there were no POR entries from Shandong, Gold Peter, Nannan, SAAME, Hengxing, Xian Asia, and Xian Yang of AJC. Therefore, consistent with the Department's regulations and practice, we are rescinding this review with respect to Shandong, Gold Peter, Nannan, SAAME, Hengxing, Xian Asia, and Xian Yang. (See 19 CFR 351.213(d)(3); see, also, *Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review*, 61 FR 46763 (September 5, 1996).)

Use of Facts Otherwise Available

As discussed in detail in the *Preliminary Results*, we have determined that companies which did not respond to the Department's questionnaire in this proceeding should not receive separate rates and, thus, are viewed as part of the PRC-wide entity. Moreover, as noted in the *Preliminary Results*, we determine that, in accordance with sections 776(a) and (b) of the Act, the use of adverse facts available is appropriate for companies which did not respond to our requests for information. No party in this proceeding has commented on these issues since the publication of the *Preliminary Results*. Thus, for these final results, we have continued to assign the PRC-wide rate of 51.74 percent to Changsha Industrial Products & Minerals Import and Export Co. and other companies subject to the PRC-wide rate.

Analysis of Comments Received

All issues raised in the case brief by parties to this review are addressed in the "Issues and Decision Memorandum" from Jeffrey May, Deputy Assistant Secretary, Import Administration to James J. Jochum, Assistant Secretary, Import Administration, dated December 15, 2003, ("Decision Memorandum"), which is hereby adopted by this notice. Attached to this notice as an Appendix

is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B-099 of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Internet at <http://www.ia.ita.doc.gov/frn/summary/list.htm> under the heading "China PRC." The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

Based on our review of comments received, verification, and a reexamination of surrogate value data, we have made certain changes to the calculations for the final results. These changes are discussed in the following Comments in the *Decision Memorandum* or in the referenced final calculation memorandum:

All Companies

Overhead, SG&A, and Profit: We have revised the overhead, SG&A and profit ratios based on the full English translation of the Agros Holding Incorporated financial statement submitted by respondents in their August 18, 2003 "2nd; Surrogate Value Submission" at Exhibit 2. The revised overhead percentage is 7.11. The revised SG&A percentage is 50.24. The revised profit percentage is 4.46. See Comment 2 of the *Decision Memorandum*.

Domestic Brokerage and Handling: In the *Preliminary Results*, domestic brokerage and handling was based on a single brokerage and handling rate. For these final results the Department has calculated the surrogate brokerage and handling value by averaging this brokerage and handling rate with two additional freight forwarder quotes which were used by the Department in recent cases.

We have continued to remove Terminal Handling Charges from the calculation because we have information from both Maersk Sealand and UML Shipping Agency Ltd. indicating that Terminal Handling Charges were not in effect in the PRC until the first quarter of 2002.

The prices are from 1999. Therefore, we have inflated them to the POR. The resulting value is US\$3.65/MT. See Comment 3 of the *Decision Memorandum*.

Gansu Tongda

Ocean Freight for Gansu Tongda's Market Economy Purchase: Gansu Tongda purchased aseptic bags in U.S. dollars from a market economy supplier.

Since the charge did not include ocean freight we have added ocean freight charges to the bag cost. See December 15, 2003, "Final Results Calculation Memorandum for Gansu Tongda Fruit Juice & Beverage Company."

Final Results of Reviews

We determine that the following dumping margins exist for the following companies for the period June 1, 2001, through May 31, 2002:

SECOND ADMINISTRATIVE REVIEW

Exporter/manufacturer/producer	Weighted-average margin percentage
Sanmenxia Lakeside Fruit Juice Co., Ltd.	0.00
Shaanxi Haisheng Fresh Fruit Juice Co., Ltd.	0.00
SDIC Zhonglu Juice Group Co., Ltd. (a.k.a. Shandong Zhonglu Juice Group Co., Ltd., Rushan Shangjin-Zhonglu Foodsuff Co., Ltd., Shandong Luling Fruit Juice Co., Ltd.).	0.00
Yantai Oriental Juice Co., Ltd.	0.00
PRC-wide rate (including Changsha Industrial Products & Minerals Import and Export Co., Ltd.)	51.74

NEW SHIPPER REVIEW

Exporter	Producer/manufacturer	Weighted-average margin percentage
Gansu Tongda Fruit Juice and Beverage Company	Gansu Tongda Fruit Juice and Beverage Company	0.00

The PRC-wide rate applies to all entries of the subject merchandise, including entries from Changsha Industrial Products & Minerals Import and Export Co., Ltd., except for entries from exporters that are identified individually above.

Assessment Rates

The Department will issue appropriate assessment instructions directly to U.S. Customs and Border Protection ("CBP") within 15 days of publication of the final results of this review.

In accordance with 19 CFR 351.212(b)(1), we have calculated importer (or customer)-specific assessment rates for the merchandise subject to this review. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate was greater than *de minimis*, we calculated a per unit assessment rate by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate was

de minimis, we will order the Customs Service to liquidate without regard to antidumping duties. All other entries of the subject merchandise during the POR will be liquidated at the antidumping duty cash deposit rate in place at the time of entry.

An injunction prevented us from liquidating entries from Oriental, Lakeside, Haisheng, Zhonglu, and Changsha. On December 12, 2003, we published a "Timken Notice", announcing the Court of International Trade's final judgement in *Yantai Oriental Juice Co., et al. v. United States and Coloma Frozen Foods, Inc., et al. See Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China: Notice of Court Decision and Suspension of Liquidation*, 68 FR 69377. Should no party appeal this decision we will liquidate these companies' entries in accordance with the language of the "Timken Notice".

Cash Deposit Requirements for Administrative Review

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) for the PRC companies named above, the cash deposit rates will be the rates for these firms indicated above; (2) for previously-reviewed PRC and non-PRC

exporters with separate rates, the cash deposit rate will be the company-specific rate established for the most recent period during which they were reviewed; (3) for all other PRC exporters, the rate will be the PRC country-wide rate, which is 51.74 percent; and (4) for all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Cash Deposit Requirements for New Shipper Review

Bonding will no longer be permitted to fulfill security requirements for shipments from Gansu Tongda of non-frozen apple juice concentrate from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this new shipper review.

The following deposit rates shall be required for merchandise subject to the order entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a)(1) and (a)(2)(B) of the Act: (1) the cash deposit rate for Gansu Tongda (*i.e.*, for subject merchandise manufactured and exported by Gansu Tongda) will be the rate indicated above; (2) the cash deposit rate for PRC exporters who received a separate rate in a prior

segment of the proceeding will continue to be the rate assigned in that segment of the proceeding; (3) the cash deposit rate for the PRC NME entity and for subject merchandise exported by Gansu Tongda but not manufactured by them will continue to be the PRC-wide rate (i.e., 51.74 percent); and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with section 751(a)(1), 751(a)(2)(B), and 777(i) of the Act.

Dated: December 15, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

APPENDIX

List of Comments and Issues in the Decision Memorandum

Comment 1: The Department's use of Poland as the primary surrogate country is contrary to law and unsupported by the administrative record.

Comment 2: The Department should revise its surrogate ratio calculations

derived from the Agros financial statement.

Comment 3: The Department should revise its surrogate value for domestic brokerage and handling.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-855]

Certain Non-Frozen Apple Juice Concentrate From the People's Republic of China: Final Results of New Shipper Review

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

ACTION: Notice of final results of new shipper review.

SUMMARY: We have determined that sales of certain non-frozen apple juice concentrate from the People's Republic of China were made below normal value during the period June 1, 2002, through November 30, 2002.

Based on our review of comments received and a reexamination of surrogate value data, we have made certain changes in the margin calculation for Yantai Golden Tide Fruits and Vegetable Food Co., Ltd. Consequently, the final results differ from the preliminary results. The final weighted-average dumping margin for Yantai Golden Tide Fruits and Vegetable Food Co., Ltd. is listed below in the section entitled "Final Results of Review." Based on these final results, we will instruct U.S. Customs and Border Protection to assess antidumping duties based on the difference between the export price and normal value on all appropriate entries.

EFFECTIVE DATE: December 22, 2003.

FOR FURTHER INFORMATION CONTACT: Audrey Twyman or John Brinkmann, Group 1, Office I, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-3534, or (202) 482-4126, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 30, 2003, the Department published in the **Federal Register** the preliminary results of this new shipper review of non-frozen apple juice concentrate ("AJC") from the People's

Republic of China ("PRC") for Yantai Golden Tide Fruits and Vegetable Food Co., Ltd. ("Golden Tide"), (see *Certain Non-Frozen Apple Juice Concentrate From the People's Republic of China: Preliminary Results of New Shipper Review*, 68 FR 44741 (July 30, 2003) ("Preliminary Results")).

In September 2003, we conducted verification of the questionnaire responses submitted by Golden Tide. We issued a verification report on October 5, 2003.

We invited parties to comment on the *Preliminary Results* and the verification report. On October 15, 2003, we received a case brief from Golden Tide. No rebuttal briefs were received. No hearing was held because none was requested.

On October 22, 2003, the Department published in the **Federal Register** a *Notice of Extension of Time Limit for the Final Results of the New Shipper Review*, 68 FR 60337.

The Department has conducted this review in accordance with section 751(a) of the Tariff Act of 1930, as amended, ("the Act").

Scope of Order

The product covered by this order is certain non-frozen apple juice concentrate ("NFAJC"). Certain NFAJC 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.

Analysis of Comments Received

All issues raised in the case brief to this new shipper review are addressed in the "Issues and Decision Memorandum" from Jeffrey May, Deputy Assistant Secretary, Import Administration to James J. Jochum, Assistant Secretary, Import Administration, dated December 15, 2003, ("Decision Memorandum"), which is hereby adopted by this notice.