

Notices

Federal Register

Vol. 64, No. 225

Tuesday, November 23, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the District of Columbia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the District of Columbia Advisory Committee to the Commission will convene at 8:30 a.m. and adjourn at 12:30 p.m. on December 15, 1999, at the U.S. Commission on Civil Rights, 5th Floor Conference Room, 624 9th Street NW, Washington, DC 20425. The Committee will review staff's draft project proposal and start developing issues and questions for prospective panelists as discussed in the proposal.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Lewis Anthony, 202-483-3262, or Ki-Taek Chun, Director of the Eastern Regional Office, 202-376-7533 (TDD 202-376-8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 16, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.
[FR Doc. 99-30400 Filed 11-22-99; 8:45 am]

BILLING CODE 6335-01-P

COMMISSION ON CIVIL RIGHTS

Notice of Cancellation of Public Meeting of the South Carolina Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the South Carolina Advisory Committee to the Commission which was to have convened at 1 p.m. and adjourned at 5 p.m. on November 18, 1999, at the Adam's Mark Hotel, 1200 Hampton Street, Columbia, South Carolina, has been canceled.

The original notice for the meeting was announced in the **Federal Register** on Monday, November 1, 1999, FR Doc. 99-28441, 64 FR, No. 210, p. 58807.

Persons desiring additional information should contact Bobby D. Doctor, Director of the Southern Regional Office, 404-562-7000 (TDD 404-562-7004).

Dated at Washington, DC, November 16, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.
[FR Doc. 99-30428 Filed 11-18-99; 11:29 am]

BILLING CODE 6335-01-P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Virginia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Virginia Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 4 p.m. on December 15, 1999, at the Radisson Ft. Magruder Hotel, 6945 Pocahontas Trail (on Route 60, 2 miles south of Route 199), Williamsburg, Virginia 23185. The purpose of the meeting is to plan for release of a report and a series of forums on civil rights issues, and to hear from invited guests on local civil rights issues.

Persons desiring additional information, or planning a presentation to the Committee, should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202-376-7533 (TDD 202-376-8116). Hearing-impaired persons who will attend the meeting

and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 16, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.
[FR Doc. 99-30429 Filed 11-22-99; 8:45 am]

BILLING CODE 6335-01-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-855]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate From the People's Republic of China

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

EFFECTIVE DATE: November 23, 1999.

FOR FURTHER INFORMATION CONTACT: Sally Hastings, Craig Matney, Annika O'Hara or Vincent Kane, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-3454, (202) 482-1778, (202) 482-3798, or (202) 482-2815, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce ("Department") regulations are to the regulations at 19 CFR part 351 (April 1, 1998).

Preliminary Determination

We preliminarily determine that certain non-frozen apple juice concentrate ("NFAJC") from the People's Republic of China ("PRC") is being, or is likely to be, sold in the United States at less than fair value

("LTFV"), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on July 6, 1999 (64 FR 36330), the following events have occurred:

On July 22, 1999, the United States International Trade Commission ("ITC") notified the Department of its affirmative preliminary injury determination in this case.

On June 11, and July 14, 1999, we received entries of appearance by counsel on behalf of 12 producers/exporters of the subject merchandise: Yantai North Andre Juice Co., Ltd. (North Andre); Shaanxi Haisheng Fresh Fruit Juice Co., Ltd. (Haisheng); Sanmenxia Lakeside Fruit Juice Co., Ltd. (Lakeside); Shandong Zhonglu Juice Group Co., Ltd. (Zhonglu); Yantai Oriental Juice Co., Ltd. (Oriental); Qingdao Nannan Foods Co., Ltd. (Nannan); Xianyang Fuan Juice Co., Ltd. (Fuan); Xian Asia Qin Fruit Co., Ltd. (Asia Fruit); Shaanxi Machinery & Equipment Import & Export Corporation (SAAME); Shaanxi Foreign Economic & Trade Development Corporation (SFETDC); Changsha Industrial Products & Minerals Import & Export Corporation (Changsha); and Shandong Foodstuffs Imports & Export Corporation (Shandong Foodstuffs).

In response to a request from the Department, on July 22, 1999, the 12 producers/exporters listed above provided company-specific volumes of exports of the subject merchandise to the United States for the period October 1, 1998 through March 31, 1999. On July 27 and 29, 1999, the Department sent letters to the Chinese Chamber of Commerce for the Import and Export of Foodstuffs, Native produce and Animal By-Products ("China Chamber"), with copies to the Ministry of Foreign Trade and Economic Cooperation ("MOFTEC") and the Embassy of the PRC in Washington, DC, requesting: (1) the total quantity of NFAJC exported to the United States by the PRC during the POI; (2) the names of all companies (other than the 12 already identified) that exported NFAJC to the United States during the POI and the quantity that each exported; and (3) for those exporters which are not also the producers, the names of the producers that supply them. On August 11, 1999, the China Chamber provided total PRC NFAJC exports to the United States for the October 1998 through March 1999 period and the requested company-

specific export and contact information for 18 additional exporters.

Given the large number of exporters involved, we determined it necessary to limit the number of respondents in this investigation to the five largest producers/exporters based on their volumes of exports to the United States (see August 17, 1998, Decision Memorandum to the Acting Deputy Assistant Secretary, Import Administration). We selected the following five companies as mandatory respondents: North Andre; Haisheng; Oriental; Nannan; and SAAME. On August 17, 1999, the Department issued the full antidumping questionnaire to these five producers/exporters. On August 18, 1999, we issued a questionnaire concerning quantity and value of sales of NFAJC, and company structure, ownership, and affiliations ("separate rates questionnaire") to the remaining identified producers/exporters through their counsel or through the China Chamber (with copies to MOFTEC and the Embassy of the PRC), and requested that they assist in distributing it to all exporters who might request separate rates (see PRC-Wide Rate section below). On August 18, 1999, Lakeside and Zhonglu requested that they be allowed to participate as voluntary respondents in this investigation. On September 9, 1999, we accepted Lakeside and Zhonglu as voluntary respondents because both companies were suppliers of a mandatory respondent and were, therefore, already required to participate in this investigation. Counsel withdrew its appearance on behalf of SFETDC on August 23, 1999.

On September 15, 1999, 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 both the petitioners and the respondents on September 27, 1999. Respondents and petitioners filed rebuttal comments on surrogate values on October 4 and 6, 1999, respectively.

On September 21 and October 5, 1999, the Department received sections A, C, and D questionnaire responses from the five mandatory and the two voluntary respondents: North Andre; Haisheng; Oriental; Nannan; SAAME; Lakeside; and Zhonglu. Fuan, Asia Fruit, Changsha, and Shandong Foodstuffs provided responses to the separate rates questionnaire on September 21, 1999. We issued supplemental questionnaires to respondents in October and received supplemental responses in October and November 1999. Between October 14

and 20, 1999, we received comments on the responses from the petitioners.

Critical Circumstances

On September 7, 1999, pursuant to the allegation of critical circumstances contained in the petition, the Department requested information regarding shipments of NFAJC from the seven respondents participating in this investigation. Each respondent provided the requested information on October 5, 1999. On November 3, 1999, the Department issued its preliminary determination that critical circumstances exist with respect to SAAME, Lakeside, Haisheng, North Andre, Nannan, and for all other exporters covered by this investigation. We found that critical circumstances do not exist with respect to Oriental and Zhonglu. For a complete discussion of our analysis, see *Memorandum to Deputy Assistant Secretary Richard W. Moreland*, dated November 3, 1999, on file in Room B-099 of the Department's headquarters and the *Preliminary Determination of Critical Circumstances: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China*, 64 FR 61835 (November 15, 1999).

Scope of Investigation

For purposes of this investigation, the product covered by the scope is 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 investigation 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 petitioners originally excluded from the scope of this investigation NFAJC fortified with vitamins or minerals. However, on September 24, 1999, the petitioners requested that the Department expand the scope to include NFAJC fortified with vitamins or minerals. The petitioners made this request based on their concern that circumvention might occur if NFAJC with vitamins and minerals were excluded from the scope of the investigation. To substantiate this claim, they provided an affidavit attesting to the fact that a buyer/seller of Chinese NFAJC had been told that Chinese exporters were considering the possibility of fortifying NFAJC with vitamins or minerals as one way to avoid the payment of antidumping duties.

On September 28, 1999, the respondents objected to the inclusion of NFAJC with vitamins and minerals stating that the ITC's preliminary determination was made with respect to NFAJC that did not include added vitamins and minerals. The respondents also cited to the antidumping and countervailing duty investigations of pasta from Turkey and Italy ("Pasta"), where the Department chose to retain the original scope rather than expand it at the request of the petitioners to include pasta in packages of more than five pounds. (See, Memorandum to Susan G. Esserman, Assistant Secretary for Import Administration from Barbara Stafford, Deputy Assistant Secretary for Investigations, dated October 10, 1995, entitled "Antidumping and Countervailing Duty Investigations of Pasta from Italy and Turkey—Scope Issue")

In this case, we have preliminarily determined to include NFAJC with vitamins and minerals for the following reasons. First, the petitioners have provided evidence that circumvention may occur unless the scope is expanded. Second, the ITC will have the opportunity to examine this issue in its final determination (if necessary). Finally, the courts have given the Department discretion in defining the scope. " * * * the Department may fashion the scope of an order so as to prevent circumvention by parties in the future "employing inventive import strategies." (*NTN Bearing Corp. of America v. United States*, 747 F. Supp. 726, 731 (CIT 1990). Although we have preliminarily included NFAJC with vitamins and minerals in the scope of this investigation, we will continue to investigate this matter for our final determination.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheading 2009.70.20. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of this investigation ("POI") corresponds to the exporters' two most recent fiscal quarters prior to the filing of the petition, *i.e.*, October 1, 1998 through March 31, 1999.

Nonmarket Economy Country and Market Oriented Industry Status

The Department has treated the PRC as a nonmarket economy ("NME") country in all past antidumping investigations (*see, e.g., 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*"). A designation as an NME remains in effect until it is revoked by the Department (*see* section 771(18)(C) of the Act).

The respondents in this investigation have not requested a revocation of the PRC's NME status. We have, therefore, preliminarily determined to continue to treat the PRC as an NME.

Separate Rates

All of the respondents have provided the requested company-specific separate rates information and have stated that for each company, there is no element of government ownership or control.

The Department's separate rate test is not concerned, in general, with macroeconomic/border-type controls, *e.g.*, export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. See *Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value*, 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997); and *Honey from the People's Republic of China: Preliminary Determination of Sales at Less than Fair Value*, 60 FR 14725, 14726 (March 20, 1995) ("*Honey*").

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as modified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China* (59 FR 22585, May 2, 1994). 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.

1. Absence of De Jure Control

The respondents have placed on the record a number of documents to demonstrate absence of *de jure* government control, including the

"Foreign Trade Law of the People's Republic of China" ("Foreign Trade Law"), the "Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People" ("Industrial Enterprises Law"), the "Law of the People's Republic of China on Chinese-Foreign Cooperative Joint Ventures" ("Joint Ventures Law"), and the "Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations."

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., Final Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China*, 60 FR 54472 (October 24, 1995); *see also Mushrooms*.) We have no new information in this proceeding which would cause us to reconsider this determination. For the purposes of this investigation and in prior cases, the Department has also analyzed the Industrial Enterprises Law and found that this law establishes mechanisms for private control of companies which indicate an absence of *de jure* control. *See Pure Magnesium from the People's Republic of China: Final Results of New Shipper Review*, 63 FR 3085, 3086 (January 21, 1998).

According to the respondents, NFAJC exports are not affected by quota allocations or export license requirements. The producers/exporters claim to have the autonomy to set the price at whatever level they wish through independent price negotiations with their foreign customers without government interference.

Accordingly, we preliminarily determine that there is an absence of *de jure* government control over export pricing and marketing decisions of the respondents.

2. Absence of De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. (*See Mushrooms*.) Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export

functions: (1) Whether the export prices are set by, or subject to the approval of, a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses (*see Mushrooms*).

Each of the 11 respondents in this investigation has asserted the following: (1) It establishes its own export prices; (2) it negotiates contracts without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds from export sales and uses profits according to its business needs without any restrictions. Additionally, these 11 respondents have stated that they do not coordinate or consult with other exporters regarding their pricing. This information supports a preliminary finding that there is an absence of *de facto* governmental control of the export functions of these companies. Consequently, we preliminarily determine that all responding exporters have met the criteria for the application of separate rates.

Antidumping Deposit Rate for Those Producers/Exporters That Responded Only to the Separate Rates Questionnaire

For those PRC producers/exporters that responded to our separate rates questionnaire but did not respond to the full antidumping questionnaire (because they were not selected to respond or because they did not submit a voluntary response), we have calculated a weighted-average margin based on the rates calculated for those producers/exporters that were selected to respond, except that we did not include the rate for North Andre which was zero. (*See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China*, 61 FR 19026 (April 30, 1996) ("*Bicycles from the PRC*").

PRC-Wide Rate

Information on the record of this investigation indicates that there are numerous producers/exporters of the subject merchandise in the PRC. As noted in the case history section above, all exporters were given the opportunity to respond to the separate rates questionnaire. Based upon our knowledge of PRC exporters and the fact

that U.S. import statistics show that responding companies did not account for all imports into the United States from the PRC, we have preliminarily determined that PRC exporters of NFAJC failed to respond to our questionnaire.

Section 776(a)(2) of the Act provides that "if an interested party or any other person—(A) withholds information that has been requested by the administering authority or the Commission under this title, (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title."

Section 776(b) of the Act further provides that adverse inferences may be used when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. The producers/exporters that decided not to respond to the separate rates questionnaire failed to act to the best of their ability in this investigation. Absent a response, we must presume government control of these companies (*see, e.g., Bicycles from the PRC*). Moreover, the Department has determined that, in selecting from among the facts otherwise available, an adverse inference is warranted.

In accordance with our standard practice, as adverse facts available, we are assigning to those companies that did not respond to the Department's separate rates questionnaire the higher of: (1) The highest margin stated in the notice of initiation; or (2) the highest margin calculated for any respondent in this investigation (*see, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Japan*, 63 FR 40434 (July 29, 1998)). In this case, the adverse facts available margin is 54.55 percent, which is the highest margin calculated for a respondent in this investigation (Lakeside).

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on "secondary information," such as the petition, the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action accompanying the URAA, H.R. Doc. No.

103-316 (1994) (SAA), states that "corroborate" means to determine that the information used has probative value. *See* SAA at 870.

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. In an investigation, if the Department chooses as facts available a calculated dumping margin of another respondent, it is not necessary to question the reliability of that calculated margin. With respect to relevance, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin may not be appropriate, the Department will attempt to find a more appropriate basis for facts available (*see, e.g., Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin as adverse best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin)). In this investigation, there is no indication that the highest calculated margin is unreliable or irrelevant and, hence, inappropriate to use as adverse facts available. Thus, the Department has preliminarily determined the PRC-wide rate to be 54.55 percent.

Fair Value Comparisons

To determine whether sales of the subject merchandise by North Andre, Haisheng, Lakeside, Zhonglu, Oriental, Nannan and SAAME for export to or within the United States were made at LTFV, we compared the EP or the CEP, as appropriate, to the NV, as described in the "Export Price," "Constructed Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs and CEPs to the NVs.

Export Price

For North Andre, Haisheng, Lakeside, Zhonglu, Nannan and SAAME, we used EP methodology in accordance with section 772(a) of the Act because the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation and CEP methodology was not otherwise appropriate. We calculated EP based on packed CIF, C&F, FOB or delivered prices to the first unaffiliated purchaser in the United States. Where appropriate,

we made deductions from the starting price (gross unit price) for billing adjustments, inland freight from the plant/warehouse to the port of export, marine insurance, ocean freight, U.S. duty, U.S. brokerage and handling, and U.S. inland freight. Because certain domestic inland freight expenses, ocean freight and marine insurance were paid in RMB, we based these charges on surrogate rates from India. (See "Normal Value" section for further discussion.)

Constructed Export Price

For certain sales by Haisheng and all sales by Oriental, we used CEP methodology in accordance with sections 772(b), (c) and (d) of the Act, because sales to the first unaffiliated purchaser in the United States took place after importation. For these companies, we calculated CEP based on ex-dock, ex-warehouse, CIF or delivered prices to unaffiliated purchasers in the United States. Where appropriate, we made deductions for billing adjustments, inland freight in the PRC, ocean freight, marine insurance, U.S. duty, U.S. inland freight, and U.S. warehousing. Also, where appropriate, we deducted direct and indirect selling expenses related to commercial activity in the United States. Pursuant to section 772(d)(3) of the Act, where applicable, we made an adjustment for CEP profit. We did not adjust for CEP profit for Oriental because Oriental's U.S. sales were consignment sales made through unaffiliated consignment agents. For these sales, we deducted the commission paid to the consignee.

Normal Value

Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market economy countries that: (1) Are at a level of economic development comparable to that of the NME, and (2) are significant producers of comparable merchandise. Regarding the first criterion, the Department has determined that India, Pakistan, Sri Lanka, Egypt, Indonesia, and the Philippines are countries comparable to the PRC in terms of overall economic development (see memorandum from Jeff May, Director, Office of Policy, to Susan Kuhbach, Senior Director, AD/CVD Enforcement, Office 1, September 15, 1999) ("Surrogate Memorandum").

Regarding the second criterion (related to significant production of comparable merchandise), the petitioners have alleged that India is a significant producer of apples, at least

among the countries at a comparable level of economic development to the PRC. Moreover, the petitioners claim, since there is little use for low quality apples except to make NFAJC, most countries that produce apples also produce NFAJC.

The respondents have argued that none of the countries found by the Department to be economically comparable to the PRC is a significant producer of NFAJC. Therefore, instead of relying on one of those countries, the respondents urge the Department to use Turkey, a country which they claim is a major producer of NFAJC, as the surrogate. Of the countries that are significant producers of NFAJC, according to the respondents, Turkey is closest to the PRC in terms of economic development. In addition to the fact that Turkey is a significant producer of comparable merchandise, the respondents also argue that the Department has publicly available information on many key factor values in Turkey. This is in contrast to India, where much of the factor value data submitted by the petitioners is proprietary.

Regarding the petitioners' argument that India should be used as the surrogate country, the respondents disagree, claiming that the major input into NFAJC (juice apples) is subsidized. The respondents point to the Department's Surrogate Memorandum which, in naming the economically comparable countries that could be used as surrogates, states "we know of no direct subsidies on the production or sale of any input used in the production of the subject merchandise * * *" To the contrary, the respondents claim, India subsidizes its apple producers through a price support scheme known as the Market Intervention Scheme ("MIS"). Thus, even if India's level of apple production led the Department to view India as a significant producer of comparable merchandise, India should not be used because the key input into NFAJC in India is subsidized.

For purposes of the preliminary determination, we have used India as our surrogate. First, we note that India is economically comparable to the PRC, while Turkey is not. Second, we have been able to develop publicly available factor values in India without relying on proprietary information submitted by the petitioners.

The surrogate country memorandum language to which the respondents cite concerns the Department's reluctance to use factor prices that may not, in some sense, reflect "fair market value." The meaning of "fair market value" in this context is necessarily broad, and

certainly not limited to the price prevailing in a perfectly competitive, distortion-free market, since markets the world over, particularly agricultural markets, are distorted by any number of government measures and policies such as taxes, tariffs and price/income support schemes. The concept of "fair market value" in this context is not so broad, however, that it covers all government market interventions, and the Department therefore "draws a line" with government subsidies that tend to enable producers to lower their price to the point where they (the prices) may not reflect fair market value. In such cases, the Department considers alternative factor price data. There is, however, no need to do so in this case for two reasons: (1) The MIS is a price support scheme, similar to those employed in many agricultural product markets around the world; and (2) as such, the MIS does not raise the fair market value concerns discussed above.

Although we have used India as the surrogate for this preliminary determination, we are considering this matter further for the final determination. First, we note the respondents' claim that juice apples are not internationally traded inputs. According to the respondents, the freight costs of transporting juice apples would be greater than the value of the apples themselves. Such a situation may lead the Department to place greater emphasis on the significant producer criterion than on the economically comparable criterion in making its surrogate selection. (See, Preamble to § 351.408 of the Department's Proposed Rule, 61 FR 7308, 7344, February 27, 1996) Second, although the respondents have claimed that Turkey should be considered a significant producer of NFAJC, the information they have submitted in support of this claim is limited. The petitioners' information regarding production of NFAJC is also lacking. We acknowledge that the Department, itself, has had difficulty in developing this information. However, better information on NFAJC production would be useful. Third, key factor values from India are lacking in several respects. As discussed further below, we have used a juice apple price taken from the annual report of a single apple juice producer. However, we prefer to use input prices that reflect the actions of many buyers and sellers. (See, Preamble to § 351.408 of the Department's Regulations, 62 FR 27296, 27366) Finally, we have relied on broadly aggregated data for factory overhead, SG&A, and profit. We would prefer, instead, to use data from producers of

identical or comparable merchandise in the surrogate country. (See, § 351.408(c)(4)) While the petitioners have placed information on the record regarding an Indian producer of apple juice, that information is proprietary and, hence, its use would be contrary to our policy of relying on publicly available data, where possible. (See, § 351.408(c)(1)).

We invite parties to address these issues for the final determination.

2. Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by the companies in the PRC which either produced and exported NFAJC to the United States or produced NFAJC for exporters that exported NFAJC to the United States during the POI. To calculate NV, the reported unit factor quantities were multiplied by publicly available Indian values, except as noted below.

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. For those values not contemporaneous with the POI and quoted in a foreign currency, we adjusted for inflation using wholesale price indices published in the International Monetary Fund's *International Financial Statistics*.

As appropriate, we adjusted input prices to make them delivered prices. Where a producer did not report the distance between the material supplier and the factory, we used, as facts available, either the distance to the nearest seaport (if an import value was used as the surrogate value for the factor) or the farthest distance reported for a supplier. Where distances were reported and the surrogate value was based on Indian import statistics, we added to the surrogate value a surrogate freight cost using the shorter of the reported distances from either the closest PRC port to the PRC factory, or from the domestic supplier to the factory. This adjustment is in accordance with the CAFC's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401 (Fed.Cir. 1997).

For a detailed analysis of surrogate values, see the "Factors of Production" Memorandum from the Team to the file (FOP memo) dated November 8, 1999.

Juice Apples: We valued apples using the price paid by Himachal Pradesh Horticultural Produce Marketing and Processing Corporation, as reported in the introduction to that company's 1998-99 financial statement. Because that value is contemporaneous with the POI, no adjustment was necessary.

Processing Agents: We valued all of the processing agents, except for one (PVPP), using Indian import statistics for the period April 1997 through March 1998. PVPP was not reported in the Indian import statistics. For that processing agent, we used an October 1999 price quote from a U.S. chemical company.

Labor: We valued labor using the method described in 19 CFR 351.408(c)(3).

Electricity and Coal: To value electricity, we used the 1995 electricity rates reported in the publication *Energy Prices and Taxes*, 4th quarter 1998. We based the value of coal on Indian import statistics.

Factory Overhead, SG&A, and Profit: We derived ratios for factory overhead, SGA, and profit, using 1992-93 data from the "Expenditures and Appropriations" category of the accounts of "Processing and Manufacture—Foodstuffs, Textiles, Tobacco, Leather and Products Thereof" from the *Reserve Bank of India Bulletin*, January 1997.

Packing Materials: We calculated values for plastic bags, plastic liners, and labels using Indian import statistics from the period April 1997-March 1998. We converted values from a per kilogram to a per piece basis where necessary. For steel drums, we could not find a reliable Indian value. Therefore, we used a 1994 Indonesian price.

Inland Freight Rates: To value truck freight rates, we used a 1994 rate from *The Times of India* inflated to be contemporaneous with the POI. With regard to rail freight, we based our calculation on information from the *Indian Railway Conference Association*. We calculated an average per kilometer per metric ton rate.

International Freight: We used a 1996 price quote from a U.S. shipping company. Where the PRC producer/exporter used a market economy shipper and paid for the shipping in a

market economy currency, we calculated an average price for shipping paid by that producer/exporter.

Marine Insurance: We used a June 1998 prices quote from a U.S. insurance provider.

By-products: Certain respondents reported by-products resulting from production of the subject merchandise. For those respondents that reported their production of apple essence/aroma, we have offset the cost of materials with a by-product credit. The value for apple essence/aroma was calculated as a simple average of the various prices reported at the July 1999 ITC hearing and November 1999 price quotes provided to the Department by two U.S. brokers of food products. Certain respondents claimed proprietary treatment for other by-products. Since we lacked surrogate values for these other by-products, we have not adjusted for them in this preliminary determination.

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, except for imports from North Andre whose antidumping margin is zero. In addition, for all exporters except Oriental and Zhonglu, we are directing Customs to suspend liquidation of any unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date, which is 90 days prior to the date on which this notice is published in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP or CEP, as appropriate, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

Exporter/manufacturer	Weighted-average margin percentage	Critical circumstances
Yantai North Andre Juice Co., Ltd	0.00	Yes.
Shaanxi Haisheng Fresh Fruit Juice Co., Ltd	18.58	Yes.
Sanmenxia Lakeside Fruit Juice Co., Ltd	54.55	Yes.

Exporter/manufacturer	Weighted-average margin percentage	Critical circumstances
Shandong Zhonglu Co., Ltd	9.85	No.
Yantai Oriental Juice Co., Ltd	14.97	No.
Qingdao Nannan Foods Co., Ltd	44.24	Yes.
Shaanxi Machinery & Equipment Import & Export Corp	35.29	Yes.
Xian Asia Qin Fruit Co., Ltd	28.71	Yes.
Xian Yang Fuan Juice Co., Ltd	28.71	Yes.
Changsa Industrial Products & Minerals Import and Export Co., Ltd	28.71	Yes.
Shandong Foodstuffs Import and Export Corporation	28.71	Yes.
PRC-wide rate	54.55	Yes.

The PRC-wide rate applies to all entries of the subject merchandise except for entries from exporters/factories that are identified individually above.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in six copies must be submitted to the Assistant Secretary for Import Administration no later than January 6, 2000, and rebuttal briefs no later than January 11, 2000. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on January 13, 2000, 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, within 30 days of the publication of this notice. Requests should contain: (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. If this investigation proceeds normally, we will make our final determination not later than 75 days after the date of the preliminary determination.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act.

Dated: November 15, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99-30551 Filed 11-22-99; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of issuance of an export trade certificate of review, Application No. 99-00004.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to USXT, Inc. This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT:

Morton Schnabel, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202-482-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (1997).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305 (a) of the Act and 15 CFR 325.11(a), any person aggrieved by

the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

I. Export Trade

1. Products

All Products, including, but not limited to U.S. coal; water treatment equipment, solid and medical waste treatment equipment, and other environmental-related products; food processing equipment, commodities and livestock; and educational materials and systems.

2. Services

All Services, including, but not limited to general management services, engineering services, pollution abatement services, and other services related to the Products.

3. Technology Rights

All intellectual property rights associated with Products or Services, including, but not limited to: Patents, trademarks, service marks, trade names, copyrights, neighboring (related) rights, trade secrets, know-how, and *sui generis* forms of protection for databases and computer programs.

4. Export Trade Facilitation Services (as They Relate to the Export of Products, Services and Technology Rights)

Export Trade Facilitation Services, including, but not limited to: Professional services in the areas of government relations and assistance with state and federal export programs, foreign trade and business protocol; consulting; market research and analysis; collection of information on trade opportunities; marketing; negotiations; joint ventures; shipping and export management; export licensing; advertising; grantsmanship; documentation and services related to