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MEMORANDUM TO: Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the Antidumping Duty New Shipper Review: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China ("PRC")

SUMMARY

The Department of Commerce ("Department") published its preliminary determination in the antidumping duty new shipper review of non-frozen apple juice concentrate from the PRC on August 5, 2010. See Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China: Notice of Preliminary Results of the New Shipper Review, 75 FR 47270 (August 5, 2010) ("Preliminary Results"). The period of review ("POR") is June 1, 2009, through January 20, 2010. Following the Preliminary Results and an analysis of the comments received from Lingbao Xinyuan Fruit Industry Co., Ltd. ("LXFI"),[1] we made changes to the margin calculations. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is a complete list of issues for which we received comments by parties:

COMMENT 1: Surrogate Values
A. Water
B. Containerization
C. Labor
COMMENT 2: By-Product Offset

[1] See Lingbao Xinyuan Fruit Industry Co., Ltd. Case Brief, dated September 7, 2010 ("LXFI Case Brief") and Lingbao Xinyuan Fruit Industry Co., Ltd. Comments on the Wage Rate Issue, dated November 5, 2010.

DISCUSSION OF THE ISSUES

COMMENT 1: Surrogate Values

A. Water

- LXFI argues that the Department incorrectly accounted for water usage and improperly valued water in the Preliminary Results. LXFI states that it obtains its water free of charge by pumping it from the ground and, therefore, does not incur any expenses for water. Moreover, LXFI argues that it incurs the electricity costs associated with pumping and purifying the water which were already reported in the electricity variable. Finally, LXFI argues that because it recycles and reuses its water, the Department is overstating its water usage.

Department's Position:

Section 773(c)(3) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to value the quantities of all raw materials employed in producing subject merchandise, including inputs obtained free of charge, such as water in this case. See Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 71 FR 64930, 64936 (November 6, 2006). Moreover, LXFI explains that it is not possible to separate its electricity charges related to pumping and purifying the water because there is no meter that separately records this usage.[2] The Department relied on the information provided by LXFI. If LXFI cannot separate these charges, the Department certainly cannot derive a value for them without introducing inaccuracies into the calculation of normal value. In similar cases where the respondent is pumping water free of charge, it is the Department's practice to apply a surrogate value ("SV") for water consumption without adjusting electricity usage related to pumping.[3]

LXFI's argument that the Department is overstating its water consumption because LXFI recycles and reuses its water is without merit. As stated above, section 773(c)(3) of the Act requires the Department to value the quantities of all raw materials employed in producing subject merchandise. The Department is valuing the quantity of water consumed, regardless of how many times this water is recycled and reused. Further, LXFI explained that reported water consumption "was based on the sum of the monthly meter readings."[4] Water meters record the water flow as it is pumped from the ground. The water meter reading does not take into account recycling and reusing. Therefore, in the final results, the Department will continue to apply an SV to the quantity of water LXFI consumed during the POR, *i.e.*, the amount of water LXFI pumped from the ground.

[2] See LXFI Case Brief at 1.
[3] See, e.g., Third Administrative Review of Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 74 FR 10026, 10028 (March 9, 2009).
[4] See LXFI's Section D Questionnaire Response, dated April 1, 2010, at 9.

B. Containerization

- LXFI argues that by valuing containerization, the Department is overstating its packing expenses because it did not incur containerization.
- LXFI explains that the importer sent the container to LXFI's factory and LXFI's workers loaded the subject merchandise into the container. Therefore, by reporting the packing labor and the freight charges to the port, it has reported all packing expenses incurred.

Department's Position:

The Department disagrees that the containerization expense is being overstated. Although LXFI stated that the shipping line sent the container to the factory and that LXFI did not incur the containerization fee,[5] the subject merchandise was containerized and a containerization fee was incurred. According to LXFI the subject merchandise was under LXFI's custody as it was loaded into the container and transported to the port.[6] See LXFI's Supplemental Questionnaire Response, dated July 7, 2010, at 1-2 and Exhibit 2 for the proprietary discussion of LXFI's movement expenses and a definition of the shipping term. Therefore, for the final results, the Department will continue to apply an SV for containerization.

C. Labor

- LXFI argues the Department's method for determining the labor SV is flawed because its practice of selecting economically comparable countries based on the list of potential surrogate countries from the Surrogate Country Memo.[7] as bookends for the levels of gross national income, is arbitrary and does not demonstrate why these countries are economically comparable.
- LXFI further argues that the Department's reliance on two Harmonized Tariff Schedule of the United States (''HTSUS'') numbers, 200970 and 210690, identified in the scope of the order on non-frozen apple juice concentrate to determine producers of comparable merchandise is too broad and should instead only use HTSUS 200970.

Department's Position:

In Dorbest Ltd. v. United States, 604 F.3d 1363, 1372 (Fed. Cir. 2010) ("Dorbest") the Court of Appeals for the Federal Circuit ("CAFC") invalidated the Department's regulation, 19 CFR 351.408(c)(3), which directs the Department to value labor using a regression-based method. As a consequence of the CAFC's decision, the Department is no longer relying on a regression-based wage rate. For the final results of this review, instead, we have calculated an hourly wage rate in valuing LXFI's reported labor input by averaging industry-specific earnings and/or wages

[5] See LXFI's Section C&D Supplemental Questionnaire Response, dated June 2, 2010, at 1.
[6] See LXFI's Case Brief at 5.
[7] See Memorandum from Kelly Parkhill to Alex Villanueva, Request for a List of Surrogate Countries for a New Shipper Review of the Antidumping Duty Order on Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China, dated February 16, 2010 ("Surrogate Country Memo").

in countries that are economically comparable to the PRC and significant producers of comparable merchandise.

Section 773(c)(4) of Act requires the Department "to the extent possible" to use "prices or costs of factors of production in one or more market economy countries that are (A) at a level of economic development comparable to that of the nonmarket economy country, and (B) significant producers of comparable merchandise." Accordingly, to calculate a wage rate, the Department first looked to the Surrogate Country Memo issued in this proceeding to determine countries that were economically comparable to the PRC.

Consistent with 19 CFR 351.408, the Department places primary emphasis on gross national income ("GNI") in determining economically comparable surrogate countries.[8] In this review, the list of potential surrogate countries found to be economically comparable to the PRC included India, the Philippines, Indonesia, Thailand, Ukraine, and Peru.[9] See Surrogate Country Memo. From this list of countries contained in the Surrogate Country Memo, the Department identified the country with the highest GNI (i.e., Peru) and the lowest GNI (i.e., India) as "bookends" for determining the universe of countries that could be classified as economically comparable to the PRC. Relying on the World Bank's World Development Report (using the 2008 GNIs), the Department then identified all countries with per capita incomes that fell between the bookends. This resulted in 43 countries, ranging from India with a GNI of U.S. Dollars ("USD") 1,070 to Peru with GNI of USD 3,990.[10] The Department considers these 43 countries to be economically comparable to the PRC. LXFI challenges this analysis as "arbitrary," but they do not substantiate the claim in anyway.

Next, regarding the "significant producer" prong of the Act, the Department identified all countries that had exports of comparable merchandise (defined as exports under HTS 200970 and 210690, the six-digit HTS numbers identified in the scope of the order) between 2007 and 2009, and deemed such countries to be significant producers.[11] In this case, we have defined a "significant producer" as a country that has exported comparable merchandise between 2007 through 2009. After screening for countries that had exports of comparable merchandise, we found that 29 of the 43 countries designated as economically comparable to the PRC are also significant producers.

[8] The Department notes that 19 CFR 408(b) specifies that the "Department places primary emphasis on per capita GDP." However, it is Departmental practice to use "per capita GNI, rather than per capita GDP, because while the two measures are very similar, per capita GNI is reported across almost all countries by an authoritative source (the World Bank), and because the Department believes that the per capita GNI represents the single best measure of a country's level of total income and thus level of economic development." See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716 (October 19, 2006) ("Antidumping Methodologies").

[9] The Department notes that these six countries are part of a non-exhaustive list of countries that are at a level of economic development comparable to the PRC. See Surrogate Country Memo.

[10] See Memorandum to the File through Alex Villanueva, Program Manager: New Shipper Review of Non-Frozen Apple Juice Concentrate from the People's Republic of China ("PRC"): Surrogate Values for the Preliminary Results ("Prelim Surrogate Values Memo"), at Exhibit 7.

[11] Id.

LXFI argues that HTSUS 210690, included in the scope of the antidumping order, is too broad to define exporters of comparable merchandise. HTSUS 210690 was added after the Preliminary Determination[12] during the less-than-fair-value investigation because HTSUS 200970, alone, "does not fully incorporate all products included in the written description of the merchandise under investigation."[13] We disagree with LXFI's argument that the HTSUS categories we used to define significant exporters are overbroad. As an initial matter, the HTSUS categories are those that include comparable merchandise and represent the best available information. LXFI does not challenge that there is subject merchandise covered by these classifications. Thus, we do not have reason to believe that the selected countries did not export like-merchandise under these HTSUS numbers. Accordingly, HTSUS 210690 continues to be as valid as HTSUS 200970 for consideration in determining which countries are significant producers of comparable merchandise in calculating wage rates.

Once 29 countries had been identified as significant producers of comparable merchandise from comparable economies, the Department then identified which of these countries also reported the necessary wage data. In doing so, the Department continued to rely upon International Labor Organization ("ILO") Chapter 5B "earnings," if available and "wages" if not.[14] We used the most recent data available (2008) and went back five years, resulting in wage data from 2003-2008. We then adjusted the wage data for countries where it was available to the POR using the relevant Consumer Price Index ("CPI").[15] Of the countries that the Department had determined are both economically comparable and significant producers, 21 countries, i.e., 1) Albania, 2) Belize, 3) Bolivia, 4) Cape Verde, 5) El Salvador, 6) Fiji, 7) Guatemala, 8) Guyana, 9) Honduras,

[12] See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate From the People's Republic of China, 64 FR 65675 (November 23, 1999).

[13] See Non-Frozen Apple Juice Concentrate From the People's Republic of China: Notice of Amended Preliminary Determination, Postponement of Final Determination and Extension of Provisional Measures, 64 FR 72316 (December 27, 1999).

[14] The Department maintains its current preference for "earnings" over "wages" data under Chapter 5B. However, under the previous practice, the Department was typically able to obtain data from somewhere between 50-60+ countries. Given that the current basket now includes fewer countries, the Department found that our long-standing preference for a robust basket outweighs our exclusive preference for "earnings" data. Thus, if earnings data is unavailable from the base year (2008) or the previous five years (2003-2008) for certain countries that are economically comparable and significant producers of comparable merchandise, the Department will use "wage" data, if available, from the base year or previous five years. The hierarchy for data suitability described in the 2006 Antidumping Methodologies still applies for selecting among multiple data points within the "earnings" or "wage" data. This allows the Department to maintain consistency as much as possible across the basket.

[15] Under the Department's regression analysis, the Department limited the years of data it would analyze to a two-year period. See Antidumping Methodologies, 71 FR at 61720. However, because the overall number of countries being considered in the regression methodology was much larger than the list of countries now being considered in the Department's calculations, the pool of wage rates from which we could draw from two years worth of data was still significantly larger than the pool from which we may now draw using five years worth of data (in addition to the base year). The Department believes it is acceptable to review ILO data up to five years prior to the base year as necessary (as we have previously), albeit adjusted using the CPI. See Expected Non-Market Economy Wages: Request for Comment on Calculation Methodology, 70 FR 37761, 37762 (June 30, 2005). In this manner, the Department will be able to capture the maximum amount of countries that are significant producers of comparable merchandise, including those countries that choose not to report their data on an annual basis. See also Memorandum to the File, through, James C. Doyle, from Alex Villanueva, Regarding New Shipper Review of the Antidumping Duty Order on Non-Frozen Apple Juice Concentrate from the People's Republic of China: Industry-Specific Wage Selection, dated October 19, 2010.

10) India, 11) Mongolia, 12) Morocco, 13) Nicaragua, 14) Nigeria, 15) Paraguay, 16) Samoa, 17) Sri Lanka, 18) Sudan, 19) Swaziland, 20) Syria, and 21) Tunisia, were omitted from the wage rate valuation because there were no earnings or wage data available. The remaining eight countries reported either earnings or wage rate data to the ILO within the prescribed six-year period.[16]

LXFI does not believe that it is appropriate to use these eight countries in its wage rate calculations, and argues that the Department should only use a single surrogate country in valuing wages, as it does for most other factors of production. While this approach can reliably be used to value other FOPs, wage data from a single surrogate country does not constitute the best available information for purposes of valuing the labor input due to the variability that exists between wages and GNI. Using the high- and low-income countries identified in the Surrogate Country Memo as bookends provides more data points which the Department views as more preferable. While there is a strong worldwide relationship between wage rates and GNI, too much variation exists among the wage rates of comparable market economies. As a result, we find that reliance on wage data from a single country is not preferable where in this case data from more than five countries are available for the Department to use. For example, when examining the most recent wage data, even for countries that are relatively comparable in terms of GNI for purposes of factor valuation (e.g., countries with GNIs between USD 1,040 and USD 3,990), the wage rate spans from USD 0.48 to USD 2.37.[17] Additionally, although both India and Guatemala have GNIs below USD 2,940, and both could be considered economically comparable to the PRC, India's observed wage rate is USD 0.48, as compared to Guatemala's observed wage rate of USD 1.23 – over double that of India.[18] There are many socio-economic, political and institutional factors, such as labor laws and policies unrelated to the size or strength of an economy, that cause significant variances in wage levels between countries. For this reason, and because labor is not traded internationally, the variability in labor rates that exists among otherwise economically comparable countries is a characteristic unique to the labor input.[19] Moreover, the large variance in these wage rates illustrates why it is preferable to rely on data from multiple countries for purposes of valuing labor. The Department thus finds that reliance on wage data from a single country is not preferable where data from several countries are available. For these reasons, the Department maintains its long-standing position that, even when not employing a regression methodology, more data are still better than less data for purposes of valuing labor. Accordingly, in order to minimize the effects of the variability that exists between wage data of comparable countries, the Department has employed a methodology that relies on as large a number of countries as possible that also meet the statutory requirement that a surrogate be derived from a country that is economically comparable and also a significant producer. Indeed, for this reason, although the Department is no longer using a regression-based methodology to value labor, the Department has determined that reliance on labor data from

[16] See ILO's Yearbook of Labor Statistics.

[17] See Prelim Surrogate Value Memo at 5-6, citing to "Expected Wages of Selected NME Countries," revised in December 2009, available at <http://ia.ita.doc.gov/wages/index.html>.

[18] Id.

[19] See e.g., ILO, Global Wage Report: 2009 Update, (2009) at 5, 7, 10. <http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_116500.pdf>.

multiple countries, as opposed to labor data from a single country constitutes the best available information for valuing the labor input.[20]

In the alternative, LXFI argues that that Department should consider only five countries from the Surrogate Value Memo. However, just because those countries are economically comparable does not mean that they are also significant producers. The methodology the Department has applied in this case addresses both of the statutory prongs. Further, in order to minimize the effects of the variability that exists between wage data of comparable countries, the Department has employed a methodology that relies on as large a number of countries as possible in its calculations. Accordingly, the Department has not limited its analysis in the manner advocated by LXFI.

It is the Department's policy to prefer specific factors of production data over general data when the administrative record supports such an analysis. Based on the selection methodology set forth above, the Department has determined it is most appropriate to rely on industry-specific wage data reported by ILO in these final results. Determinations as to whether industry-specific ILO datasets constitute the best available information must necessarily be made on a case-by-case basis. In making these determinations, the Department considers a number of factors such as the appropriateness of the ILO industry-specific data in light of the subject merchandise and the availability of industry specific data.

Because an industry-specific dataset relevant to this proceeding exists within the Department's preferred ILO source, and because absent evidence to the contrary, the industry-specific data would be *at least* more specific to the subject merchandise than the national manufacturing data, the Department used industry-specific data to calculate a surrogate wage rate for the final results, in accordance with section 773(c)(1) of the Act. Thus, we have determined that this is the best available information from which to derive the surrogate wage rate based on the analysis set forth below.

The ISIC code is maintained by the United Nations Statistical Division and is updated periodically. The ILO, an organization under the auspices of the United Nation, utilizes this classification for reporting purposes. Currently, wage and earnings data are available from the ILO under the following revisions: ISIC-Rev.2, ISIC-Rev.3, and ISIC-Rev.4. The ISIC code establishes a two-digit breakout for each manufacturing category, and also often provides a three- or four-digit sub-category for each two-digit category. Depending on the country, data may be reported at either the two-, three- or four-digit subcategory.

[20] Both the statute and our regulations recognize the need to source factor data from more than one country.[20] Although 19 CFR 351.408(c)(2) provides that the Department will *normally* source the factors of production from a single surrogate country, the language in the regulation provides sufficient discretion for the Department to address situations in which sourcing a factor of production from a single source is not preferable. Use of the word "normally" means that this is not an absolute mandate. As we explained, the unique nature of the labor input warrants a departure from our normal preference of sourcing all factor inputs from a single surrogate country.

It is the Department's preference to use data reported under the most recent revision. However, in this case we found that none of the countries found to be economically comparable and significant producers reported data pursuant to ISIC-Rev.4. Accordingly, in this case, we turned to the industry definitions contained in ISIC-Rev.3 to find the appropriate classification for non-frozen apple juice concentrate. Under the ISIC-Revision 3 standard, the Department identified the two-digit series most specific to non-frozen apple juice concentrate as Sub-Classification 15, which is described as "Manufacture of food products and beverages." This class includes the "manufacture of non-alcoholic beverages commonly known as soft drinks. Manufacture of drinks flavoured with fruit juices, syrups, or other materials. Production, i.e., bottling at the source, of spa or mineral waters." Accordingly, for this new shipper review, the Department has calculated the surrogate wage rate using a simple average of the data provided to the ILO under Sub-Classification 15 of the ISIC-Revision 3 standard by countries determined to be economically comparable to the PRC and significant producers of comparable merchandise. Additionally, when selecting data available from the countries reporting under ISIC-Revision 3, Sub-Classification 15, we used the most specific wage data available within this revision.

While the Department prefers to use the most specific wage data available within the selective ISIC revision, because no country that was considered economically comparable and a significant producer reported earnings or wage data below the two-digit level, the Department has relied on the two-digit sub-classification in our industry-specific wage rate calculation. Accordingly, based on the above, the Department relied on data reported under ISIC-Rev.3. Sub Classification 15 "Manufacture of food products and beverages" from the following eight countries to arrive at the industry-specific wage rate calculated for this new shipper review: Ecuador, Egypt, Indonesia, Jordan, Peru, the Philippines, Thailand, and Ukraine.

Therefore, based on the foregoing methodology, the wage rate to be applied in the final results is 1.29 USD/Hour. This wage rate is derived from comparable economies that are also significant producers of the comparable merchandise, consistent with the CAFC's ruling in Dorbest and the statutory requirements of section 773(c) of the Act.

COMMENT 2: By-Product Offset

- LXFI argues that the Department's decision to deny LXFI a by-product offset for coal cinder is incorrect. LXFI explains that coal cinder is the residue left over from burning coal to generate steam used for evaporation in the production of apple juice concentrate.
- LXFI goes on to state that this coal cinder is then sold and LXFI provided documentation for the production and sale of coal cinder during the POR. Further, LXFI argues that if the Department continues to not grant a by-product offset, then it should adjust LXFI's coal consumption by the amount of coal cinder sold.

Department's Position:

Upon further examination of the data and arguments submitted by LXFI, the Department agrees that the coal cinder should be treated as a by-product offset to normal value. In cases involving multi-level stage of productions it has been our practice to offset the cost of production at each

stage because all factors used in each stage contribute to the production of the subject merchandise.[21] In this case, there is sufficient record evidence showing that coal was used to produce the subject merchandise and coal cinder was generated during the burning of that coal and subsequently sold to unaffiliated customers. Therefore, for the final results, we will grant the by-product offset for coal cinder.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of this new shipper review and the final dumping margin in the Federal Register.

_____ _____

Agree Disagree

_____

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

_____

Date

[21] See Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order, 75 FR 8301 (February 24, 2010).