A-570-855
AR: 6/1/2007-5/31/2008
PUBLIC DOCUMENT
IA/NME/9: AP/RK

September 25, 2009

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

FROM: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

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

SUMMARY

We have analyzed the case briefs submitted by the respondent, Itochu Corporation and its wholly-owned subsidiaries, Yitian Juice (Shaanxi) Co., Ltd. and Laiyang Yitian Juice Co., Ltd., (collectively known as "Itochu") in the antidumping duty review of non-frozen apple juice concentrate from the PRC. The Department of Commerce ("Department") published the preliminary results for this antidumping duty review on June 30, 2009. See Non-Frozen Apple Juice Concentrate from the People's Republic of China: Preliminary Results for the Administrative Review, 74 FR 31238 (June 30, 2009) ("Preliminary Results"). The period of review ("POR") is June 1, 2007, through May 31, 2008. On July 17, 2009, the Department received a case brief from Itochu which was subsequently rejected because it contained new factual information not specifically requested by the Department. See Administrative Review of Apple Juice Concentrate from the People's Republic of China: Rejection of New Information, dated July 22, 2009, ("Rejection Letter"). As the deadline to submit case briefs was July 30, 2009, the Department allowed Itochu to resubmit their case brief. Itochu submitted a revised case brief on July 30, 2009. Following the Preliminary Results and an analysis of the comments received, we made no changes to the margin calculation. As a result of our analysis, we have not made any changes to the Preliminary Results.

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 from Itochu. No other party filed comments and no party requested a public hearing.

CASE ISSUES:

COMMENT 1: CALCULATION OF DENOMINATOR
COMMENT 2: REJECTION OF NEW INFORMATION

DISCUSSION OF THE ISSUES

Comment 1: Calculation of the Denominator

To determine the factor input quantity, the Department's questionnaire requires respondents to report the materials used to produce one unit of subject merchandise in Section D of the antidumping questionnaire.[1] The numerator of this calculation represents the total amount of material used during the POR. Normally, the denominator of this calculation represents the total amount of subject merchandise produced during the POR. However, the production quantity used in this calculation represents the amount of subject merchandise produced that has been or will be sold or used in further production, i.e., is not waste.

Itochu contends that the Department erred by using quantity sold rather than quantity produced as the denominator in the calculation of certain factors of production ("FOPs") in the Preliminary Results. Itochu states that the Department's calculation unfairly distorts the production costs and renders the inventory worthless. Itochu argues that the remaining apple juice concentrate can be sold and therefore, should be taken into consideration. Itochu contends that the Department's decision does not meet any special exception for using quantity sold. Itochu asserts that the FOPs should be recalculated using quantity produced rather than quantity sold.

Department's Position:

We disagree with Itochu's argument that the Department should calculate their FOPs using the quantity produced that it reported as the denominator.

The circumstances surrounding Itochu's POR production and sale of subject merchandise are unusual. Itochu stated very clearly on the record of this proceeding that the product sold to the U.S. customer was unique, and that Itochu incurred higher costs in producing this product due to special packaging, out-of-season production, short lead time, acquisition of materials, and differing energy and yield rates.[2] Due to machine requirements, Itochu produced a larger quantity of this product than it had contracted to sell. There is no information on the record that Itochu sold the excess production to the U.S. customer, or any other customer, during the POR. Itochu very clearly stated that the excess production was taken into account when pricing the merchandise because, as Itochu explained, it was not known whether the U.S. customer would

[1] See Itochu Antidumping Administrative Review Questionnaire, dated August 15, 2008.
[2] See Shaanxi Yitian Verification Report, dated May 5, 2009.

order additional quantities of this unusual product.[3] Most importantly, Itochu also clearly addressed the commercial value/salability of this excess production. See Analysis of the Final Results of the Administrative Review for Non-Frozen Apple Juice Concentrate from the People's Republic of China ("PRC"): Itochu Corporation to the File, Through Alex Villanueva, Program Manager, From Alexis Polovina, Case Analyst, dated September 25, 2009, for a discussion of Itochu's business proprietary explanation of the excess production.

In determining the dumping margin for Itochu, we must compare Itochu's U.S. sales value and volume to the calculated normal value. In this case, the normal value should include the necessary production costs incurred to produce the merchandise that was actually sold or would be sold, no more, no less. Therefore, we continue to find that in order to properly reflect the costs of producing the subject merchandise, the FOPs should be calculated using the quantity sold as the denominator.

Comment 2: Rejection of New Information

Itochu states that the Department's rejection of their July 17, 2009, case brief was improper. Itochu claims that the information contained therein will help the Department calculate the dumping margins as accurately as possible. Itochu contends that the Department never directly asked what would happen to their inventory if it could not be sold to the same U.S. customer. Therefore, Itochu claims that the information is not new but merely a clarification to assist the Department in its calculation.

Department's Position:

We disagree with Itochu's claim that the rejected new information corrects a factual mistake made in the Preliminary Results. The Department made its decision regarding Itochu's inventory based on the factual findings discovered at verification and Itochu's explanations in the questionnaire responses.[4] The information provided by Itochu in its July 17, 2009, case brief was found nowhere on the record. It was therefore unquestionably new factual information. As explained in the Department's letter to Itochu, "pursuant to 19 CFR 351.301(b)(2), the deadline for filing new factual information not specifically requested by the Department in this proceeding was November 17, 2008 (i.e., 140 days from the last day of the anniversary month)."[5] Thus, Itochu's submission was late by 242 days.

[3] See Itochu Second Supplemental dated January 16, 2009, at 4-5 ("Second Supplemental").
[4] See Shaanxi Yitian Verification Report and see Second Supplemental at 4-5.
[5] See Rejection Letter.

Our decision to reject Itochu's submission containing untimely new information was fully consistent with the Department's regulations. Therefore, Itochu's rejected new information will not be considered in the final results.

RECOMMENDATION:

Based on our analysis of the comments received, we recommend adopting all of the above positions, and not adjusting the margin calculation program. If accepted, we will publish the final results of this review and the final weighted-average dumping margins in the Federal Register.

AGREE___________ DISAGREE___________

____

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

____

Date