

Dated: April 2, 2003.

**Dennis Puccinelli,**

*Executive Secretary.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-853]

#### **Bulk Aspirin from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review**

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

**SUMMARY:** The Department of Commerce is currently conducting an administrative review of the antidumping duty order on bulk aspirin from the People's Republic of China. The period of review is July 1, 2001, through June 30, 2002. This review covers imports of subject merchandise from two producer/exporters.

We preliminarily find that sales have been made at not less than normal value. If these preliminary results are adopted in our final results of review, we will instruct the Customs Service to liquidate entries of bulk aspirin produced and exported by Shandong Xinhua Pharmaceutical Co., Ltd., and Jilin Henghe Pharmaceutical Company Ltd., without regard to antidumping duties.

We invite interested parties to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

**EFFECTIVE DATE:** April 9, 2003.

**FOR FURTHER INFORMATION CONTACT:** Julie Santoboni or Blanche Ziv, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4194, or (202) 482-4207, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On July 11, 2000, the Department of Commerce ("Department") published an antidumping order on bulk aspirin from the People's Republic of China ("PRC"). See *Notice of Antidumping Duty Order: Bulk Aspirin from the People's Republic of China*, 65 FR 42673 (July 11, 2000). On July 1, 2002, the Department published in the **Federal Register** an *Antidumping or Countervailing Duty Order, Finding, or Suspended*

*Investigation; Opportunity To Request Administrative Review*, 67 FR 77172 (July 1, 2002).

On July 10 and 30, 2002, in accordance with 19 CFR 351.213(b), two producer/exporters of the subject merchandise, Shandong Xinhua Pharmaceutical Co., Ltd. ("Shandong"), and Jilin Henghe Pharmaceutical Company Ltd. ("Jilin"), respectively, requested that the Department conduct an administrative review of this order. On July 31, 2002, Rhodia, Inc. ("petitioner") also requested an administrative review for Jilin and Shandong.

On August 27, 2002, we published a notice of initiation of the administrative review. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part*, 67 FR 55000 (August 27, 2002). The period of this review ("POR") is July 1, 2001, through June 30, 2002.

We issued questionnaires to Jilin and Shandong on September 24, 2002. We received responses to the questionnaires from Shandong and Jilin on November 22 and December 4, 2002, respectively.

On December 18, 2002, 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 the petitioner on January 22 and 27, 2003. Jilin provided surrogate value information to the Department on January 28 and March 13, 2003.

We issued supplemental questionnaires to Jilin and Shandong between December 2002, and March 2003. We received responses to the supplemental questionnaires from both respondents from January through March 2003.

##### **Scope of the Order**

The product covered by this review is bulk acetylsalicylic acid, commonly referred to as bulk aspirin, whether or not in pharmaceutical or compound form, not put up in dosage form (tablet, capsule, powders or similar form for direct human consumption). Bulk aspirin may be imported in two forms, as pure ortho-acetylsalicylic acid or as mixed ortho-acetylsalicylic acid. Pure ortho-acetylsalicylic acid can be either in crystal form or granulated into a fine powder (pharmaceutical form). This product has the chemical formula  $C_9H_8O_4$ . It is defined by the official monograph of the United States Pharmacopoeia 23 ("USP"). It is currently classifiable under the *Harmonized Tariff Schedule of the United States* ("HTSUS") subheading 2918.22.1000.

Mixed ortho-acetylsalicylic acid consists of ortho-acetylsalicylic acid combined with other inactive substances such as starch, lactose, cellulose, or coloring materials and/or other active substances. The presence of other active substances must be in concentrations less than that specified for particular nonprescription drug combinations of aspirin and active substances as published in the *Handbook of Nonprescription Drugs*, eighth edition, American Pharmaceutical Association. This product is currently classifiable under HTSUS subheading 3003.90.0000.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

##### **Separate Rates**

It is the Department's standard policy to assign all exporters of the merchandise subject to review in nonmarket economy ("NME") countries a single rate unless an exporter can demonstrate an absence of government control, both in law and in fact, with respect to exports. To establish whether an exporter is sufficiently independent of government control to be entitled to a separate rate, the Department analyzes the exporter in light of the criteria established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("Sparklers"), as amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("Silicon Carbide").

##### **Absence of De Jure Control**

Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: 1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; 2) any legislative enactments decentralizing control of companies; and 3) any other formal measures by the government decentralizing control of companies. See *Sparklers*, 56 FR at 20589.

##### **Absence of De Facto Control**

A *de facto* analysis of absence of government control over exports is based on four factors—whether the respondent: 1) sets its own export prices independently of the government and other exporters; 2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of

losses; 3) has the authority to negotiate and sign contracts and other agreements; and 4) has autonomy from the government regarding the selection of management. See *Silicon Carbide*, 59 FR at 22587; see also *Sparklers*, 56 FR at 20589.

In the *Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin from the People's Republic of China* 65 FR 33805 (May 25, 2000) ("*LTFV Investigation*"), we determined that there was an absence of both *de jure* and *de facto* government control of each investigated company's export activities and determined that each company warranted a company-specific dumping margin. For the POR, Jilin and Shandong (collectively, "the respondents"), responded to the Department's request for information regarding separate rates. We find that the evidence on the record is consistent with the *LTFV Investigation* and the respondents continue to demonstrate an absence of government control, both in law and in fact, with respect to their exports, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*.

#### Export Price and Constructed Export Price

For certain sales made by the respondents to the United States, we used constructed export price ("CEP") in accordance with section 772(b) of the Tariff Act of 1930, as amended ("the Act"), because the first sale to an unaffiliated purchaser occurred after importation of the merchandise into the United States. For other sales made by Jilin, we used export price ("EP"), in accordance with section 772(a) of the Act, because the subject merchandise was sold outside the United States to unaffiliated purchasers in the United States prior to importation into the United States and constructed export price methodology was not otherwise indicated.

We calculated EP based on the FOB prices to unaffiliated purchasers. We calculated CEP based on FOB and delivered prices from the respondents' U.S. subsidiaries to unaffiliated customers. In accordance with section 772(c) of the Act, as appropriate, we deducted from the starting price foreign inland freight, international freight, marine insurance, brokerage and handling, U.S. inland freight, U.S. customs duties, and U.S. warehousing expenses. We valued the deductions for foreign inland freight using surrogate data based on Indian freight costs. We selected India as the surrogate country for the reasons explained in the "Normal Value" section of this notice,

below. Where the respondent used a market-economy shipper for more than an insignificant portion of its sales and paid for the shipping in a market-economy currency, we used the average price paid by that producer/exporter to value international freight for all of its sales. See *Tapered Roller Bearings from the People's Republic of China; Notice of Preliminary Results of 2000-2001 Review, Partial Rescission of Review, and Notice of Intent to Revoke Order, in Part*, 67 FR 45451 (July 9, 2002). Where the respondent used a market-economy marine insurance provider for more than an insignificant portion of its sales and paid for the insurance in a market-economy currency, we used the average price for marine insurance paid by that producer/exporter for all of its sales.

To value brokerage and handling, we used the public version of a U.S. sales listing reported in the questionnaire response submitted by Meltroll Engineering for *Stainless Steel Bar from India; Final Results of Antidumping Duty Administrative Review and New Shipper Review and Partial Rescission of Administrative Review*, 65 FR 48965 (August 10, 2000). See the "Factors of Production Valuation Memorandum" dated April 2, 2003 ("*FOP memo*"). Because this information is not contemporaneous with the POR, we adjusted the data to the POR by using the Indian wholesale price index.

In accordance with section 772(d)(1) of the Act, for CEP sales we made deductions for the following selling expenses that related to economic activity in the United States: credit expenses, indirect selling expenses, inventory carrying costs, and direct selling expenses. Since neither respondent had U.S. dollar denominated borrowings during the POR, we calculated credit expenses using the short-term interest rate during the POR, as stated by the Federal Reserve Board. In accordance with section 772(d)(3) of the Act, we deducted from the starting price an amount for profit.

#### Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the normal value ("NV") using a factors-of-production methodology if: (1) the merchandise is exported from a NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value ("CV") under section 773(a) of the Act.

The Department has treated the PRC as a NME country in all previous antidumping cases. In accordance with section 771(18)(C)(i) of the Act, any

determination that a foreign country is a NME country shall remain in effect until revoked by the administering authority. The parties in this proceeding have not contested such treatment in this review. Therefore, we treated the PRC as a NME country for purposes of this review and calculated NV by valuing the factors of production in a 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. The Department has determined that India, Pakistan, Indonesia, Sri Lanka, and the Philippines are countries comparable to the PRC in terms of overall economic development. For a further discussion of our surrogate selection, see the December 12, 2002, Memorandum to Susan Kuhbach from Jeffrey May, "2<sup>nd</sup> Administrative Review of Bulk Aspirin from the People's Republic of China" ("Surrogate Country Memo"), which is on file in the Department's Central Records Unit in Room B-099 of the main Department building. According to the available information on the record, we determined that India is a significant producer of comparable merchandise. None of the interested parties contested the selection of India as the surrogate country. Accordingly, we calculated NV using Indian values for the PRC producers' factors of production.

We obtained and relied upon publicly available information wherever possible. In many instances, we used the *Monthly Statistics of the Foreign Trade of India; Volume II Imports ("MSFTI")* to value factors of production, energy inputs and packing materials. Consistent with the *Final Determination of Sales at Less than Fair Value: Certain Automotive Replacement Glass Windshields From the People's Republic of China*, 67 FR 6482 (February 12, 2002) and accompanying Issues and Decision Memorandum, we excluded import data reported in the *MSFTI* for Korea, Thailand and Indonesia in our surrogate value calculations. In addition to the *MSFTI* data, we used Indian domestic prices from *Indian Chemical Weekly ("ICW")* to value certain chemical inputs. See *FOP memo*.

#### Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by the respondents. To calculate NV, the

reported unit factor quantities were multiplied by publicly available Indian surrogate values.

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices to make them delivered prices. For the distances reported, we added to Indian CIF surrogate values a surrogate freight cost using the reported distances from the PRC port to the PRC factory, or from the domestic supplier to the factory. This adjustment is in accordance with the United States Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1807-1908 (Fed.Cir. 1997). For those values not contemporaneous with the POR, we adjusted for inflation using the appropriate wholesale or producer price index published in the International Monetary Fund's *International Financial Statistics*.

Certain inputs in the production of bulk aspirin are considered business proprietary information by the respondents and cannot be discussed in this preliminary results notice. For a complete analysis of surrogate values, see the *FOP memo*.

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

**Electricity, Coal and Oil:** Consistent with our approach in *Manganese Metal from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 66 FR 15076 (March 15, 2001), we calculated our surrogate value for electricity based on electricity rate data reported by the International Energy Agency ("IEA"), 4th quarter 2001. For coal, we used import values from the *MSFTI*. We based the value of fuel oil on prices reported by the IEA, 4th quarter 2001.

**Factory Overhead, SG&A, and Profit:** We based our calculation of factory

overhead and SG&A on the 2001-2002 financial data of Alta Laboratories Ltd. ("Alta"), an Indian producer of identical merchandise. Because Alta did not realize a profit during the financial period, we relied on the 2001-2002 financial data of two other Indian producers of comparable merchandise, Andhra Sugars Ltd. ("Andhra"), and Gujarat Organics Ltd. ("Gujarat").

**Packing Materials:** For packing materials we used import values from the *MSFTI*.

**Inland Freight Rates:** To value truck freight rates, we used an average of trucking rates quoted in *ICW*. For rail freight, we based our calculation on 1999 price quotes from Indian rail freight transporters.

### Preliminary Results of the Review

We preliminary find that the following dumping margins exist for the period July 1, 2001, through June 30, 2002:

Exporter/Manufacturer	Weighted-average margin percentage
Shandong Xinhua Pharmaceutical Co., Ltd. ....	0.00
Jilin Henghe Pharmaceutical Company Ltd. ....	0.00

### Assessment Rates and Cash Deposit Requirements

Pursuant to 19 CFR 351.212(b), the Department calculates an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (i.e., at or above 0.5 percent), the Department will issue appraisement instructions directly to the Customs Service to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculate importer-specific assessment rates for the subject merchandise by aggregating the dumping duties due for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer.

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of bulk aspirin entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) for the companies named above, the cash deposit rates for exports to the United States by these companies will

be the rates for these firms shown above, except that, for exporters with *de minimis* rates (i.e., less than 0.5 percent) no deposit will be required; (2) for exporters previously found to be entitled to a separate rate in a prior segment of the proceeding, and for which no review has been requested, the cash deposit rate will continue to be the rate established for that exporter in the most recent segment of the proceeding; (3) for all other PRC exporters the cash deposit rate will be 144.02 percent, the PRC country-wide ad-valorem rate; and (4) for all other non-PRC exporters of subject merchandise from the PRC to the United States, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

### Public Comment

Any interested party may request a hearing within 30 days of publication of this notice. See 19 CFR 351.310(c). Any hearing, if requested, will be held approximately 44 days after the date of publication of this notice, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of this

notice. Rebuttal briefs and rebuttals to written comments, which must be limited to issues raised in such briefs or comments, may be filed not later than 37 days after the date of publication. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.

The Department will issue a notice of final results of this administrative review, including the results of its analysis of issues raised in any such written comments, within 120 days of publication of these preliminary results.

### Notification to Importers

This notice also serves as a preliminary 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 double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 2, 2003.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-475-819]

#### **Certain Pasta from Italy: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review**

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

**ACTION:** Notice of Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review.

**SUMMARY:** The Department of Commerce is conducting an administrative review of the countervailing duty order on certain pasta from Italy for the period January 1, 2001, through December 31, 2001. We preliminarily find that certain producers/exporters have received countervailable subsidies during the period of review. If the final results remain the same as these preliminary results, we will instruct the U.S. Customs Service to assess countervailing duties as detailed in the "Preliminary Results of Review" section of this notice.

As certain requests for review were withdrawn, we are rescinding this review for the following companies: Labor S.r.L., F. Divella, S.p.A., and Delverde, S.p.A.

Interested parties are invited to comment on these preliminary results (see the "Public Comment" section of this notice).

**EFFECTIVE DATE:** April 9, 2003.

#### **FOR FURTHER INFORMATION CONTACT:**

Craig Matney or Stephen Cho, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482-1778 or 482-3798, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### **Case History**

The Department of Commerce (the "Department") published the countervailing duty order on certain pasta from Italy on July 24, 1996 (*Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination*:

*Certain Pasta From Italy*, 61 FR 38544). On July 1, 2002, the Department published a notice of "Opportunity to Request Administrative Review" of this countervailing duty order for calendar year 2001 (*Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 67 FR 44172). We received review requests for five producers/exporters of Italian pasta. We initiated our review on August 27 and September 25, 2002 (*Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 55000 and *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part and Deferral of Administrative Reviews*, 67 FR 60210, respectively ).<sup>1</sup>

On October 2, 2002, F. Divella, S.p.A. and Labor S.r.L. withdrew their requests for review, and on October 11, 2002, Delverde, S.p.A. withdrew its request for review. We are rescinding this administrative review for these three companies (see the "Partial Rescission" section, below).

Thus, this administrative review of the order covers the following producers/exporters of the subject merchandise: F.lli De Cecco di Filippo Fara S. Martino S.p.A. ("De Cecco") and Italian American Pasta Company, S.r.L. ("IAPC").

On September 10, 2002, we issued countervailing duty questionnaires to the Commission of the European Union ("EC"), the Government of Italy ("GOI"), and the producers/exporters which requested a review.<sup>2</sup> We received responses to our questionnaires in October and November 2002, and issued a supplemental questionnaire to De Cecco in December 2002. The response to the supplemental questionnaire was received in December 2002.

#### **Partial Rescission**

As noted above, F. Divella, S.p.A., Labor S.r.L. and Delverde, S.p.A. withdrew their requests for review. Because these withdrawals were timely filed, we are rescinding this review with respect to these companies (see 19 CFR 351.213(d)(1)). We will instruct the U.S. Customs Service to liquidate any entries from these companies during the period of review and to assess countervailing

duties at the rate that was applied at the time of entry.

#### **Scope of the Review**

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white ("subject merchandise"). The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Istituto Mediterraneo di Certificazione, Bioagricoop S.c.r.l., QC&I International Services, Ecocert Italia, the Consorzio per il Controllo dei Prodotti Biologici, Associazione Italiana per l'Agricoltura Biologica, or Codex S.r.L.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

#### **Scope Rulings**

The Department has issued the following scope rulings to date:

(1) On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the countervailing duty order. (See August 25, 1997 memorandum from Edward Easton to Richard Moreland, which is on file in CRU in Room B-099 of the main Commerce building.)

(2) On July 30, 1998, the Department issued a scope ruling, finding that multipacks consisting of six one-pound packages of pasta that are shrink-wrapped into a single package are within the scope of the countervailing duty order. (See July 30, 1998 letter from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Import

<sup>1</sup> Italian American Pasta Company, S.r.L. was inadvertently omitted from the August 27, 2002 initiation notice.

<sup>2</sup> On October 25, 2002, we issued a second courtesy copy of the countervailing duty questionnaire to IAPC because it did not receive the first copy.