

A-570-863
Remand
AD Determination
AD/CVD Operations: dma

WUHAN BEE HEALTHY CO., LTD. v. UNITED STATES

Consol. Court No. 03-00806
Slip Op. 05-65 (June 10, 2005)

**FINAL RESULTS OF REDETERMINATION
PURSUANT TO REMAND**

SUMMARY

The U.S. Department of Commerce (the Department) has prepared these final results of redetermination pursuant to the remand order from the United States Court of International Trade (the Court) in Wuhan Bee Healthy Co., Ltd. v. United States, Slip Op. 05-65 (CIT June 10, 2005) (Wuhan). The Court remanded the Department's final results of Wuhan's new shipper review (see Notice of Final Results of Antidumping Duty New Shipper Review: Honey From the People's Republic of China, 68 FR 62053 (October 31, 2003) (Final Results), and accompanying Issues and Decision Memorandum for the Final Results of the New Shipper Review of the Antidumping Duty Order on Honey from the People's Republic of China (PRC) (Decision Memo)), with respect to the surrogate value of coal and the use of the Indian Import Statistics from the Monthly Statistics of Foreign Trade of India (MSFTI) value for steam coal rather than the Tata Energy Research Institute's (TERI's) Energy Data Directory & Yearbook for 2001/2002 (TERI data) domestic coal prices for steam coal placed on the record by respondent, Wuhan Bee Healthy Co., Ltd. (Wuhan Bee). See Letter from Grunfeld, Desiderio, Lebowitz,

Silverman & Klestadt LLP to Donald Evans, Re: Surrogate Value Submission for New Shipper Review of Honey from the PRC, Exhibit 6 (March 31, 2003) (Wuhan Bee Surrogate Value Submission).

The Court instructed the Department to provide an explanation that reasonably supports its decision with respect to the use of import prices rather than domestic prices when valuing surrogates, in this case the surrogate value for coal, referring to Hebei Metals & Minerals Import & Export Corp. v. United States, Slip Op. 05-32 (CIT March 10, 2005) (Hebei Metals) (ordering the Department to adhere to its conditional preference for domestic surrogate data or state that it is deviating from this practice, and provide a rational explanation for doing so).

In accordance with the Court's instructions, the Department has reconsidered its analysis of the use of data from the MSFTI for the surrogate coal value it used in the Final Results. Based on the independent research that the Department conducted for Hebei Metals, and for the reasons explained below, the Department has changed its valuation of the coal input used to manufacture processed honey for this proceeding. However, the Department reiterates within this remand its longstanding policy and criteria for selecting surrogate values on a case-by-case basis in non-market (NME) proceedings. See also Hebei Metals at 6.

BACKGROUND

On December 10, 2001, the Department published an amended final determination of sales at less-than-fair-value and antidumping duty order. Notice of Amended Final Determination and Antidumping Duty Order in the Investigation of Honey from the People's Republic of China, 66 FR 63670 (December 10, 2001).

_____ On June 25, 2002, the Department received from Wuhan Bee, a producer and exporter of the subject merchandise, a properly filed request for a new shipper review under the antidumping duty order on honey from the People's Republic of China (PRC), in accordance with section 751(a)(2)(B) of the Act and section 351.214(c) of the Department's regulations.

On July 31, 2002, the Department determined that Wuhan Bee's request met the requirements of section 351.214 of its regulations and, on August 6, 2002, published its initiation of this new shipper review for the period December 1, 2001, through May 31, 2002.¹ See Honey from the People's Republic of China: Initiation of New Shipper Antidumping Duty Reviews, 67 FR 50862 (August 6, 2002).

_____ On February 28, 2003, the Department invited interested parties to submit publicly available information for purposes of 1) selecting the appropriate surrogate country, and 2) valuing the factors of production. See Letters from Donna L. Kinsella to Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt LLP and Collier Shannon Scott, dated February 28, 2003. On March 31, 2003, Wuhan Bee and petitioners submitted surrogate value comments. In the Wuhan Bee Surrogate Value Submission, Wuhan Bee requested that the Department value steam coal based on the price of steam coal in India as reported in the TERI data. In their surrogate value submission, petitioners requested that the Department use a surrogate value based on a basket category for coal from MSFTI data. See Letter from Collier Shannon Scott to Secretary Evans, Re: Surrogate Value Submissions (March 31, 2003).

¹ We also initiated a new shipper review based on a request filed by Chengdu-Dujiangyan Dubao Bee Industrial Co., Ltd. (Dubao). However, on January 23, 2003, the Department rescinded the new shipper review with respect to Dubao. See Honey from the People's Republic of China: Partial Rescission of Antidumping Duty New Shipper Review, 68 FR 4760 (January 30, 2003).

On October 24, 2003, pursuant to 19 U.S.C. § 1673(d), the Department issued its final results of Wuhan Bee's new shipper review, which were published on October 31, 2003. See Final Results and accompanying Decision Memo. The Department determined that Wuhan Bee's sales of honey from the PRC were being made at less-than-fair-value in the United States. In issuing the final results, the Department addressed all comments raised by interested parties in the Decision Memo, including the surrogate value for coal. See Final Results, 68 FR 62053 and Decision Memo at 17 - 22, Comment 4.

On July 16, 2004, Wuhan Bee brought suit at the Court, asking the Court to instruct the Department to 1) value Wuhan Bee's raw honey using the March 2001 Tribune of India article submitted by Wuhan Bee, or 2) eliminate the inflator applied to the March 2000 Tribune of India article; 3) recalculate the surrogate financial ratios using the audited financial statement of the Coorg Honey and Wax Producers Cooperative, or 4) if the Department continued to rely on the Mahabaleshwar Honey Producers Cooperative Society, Ltd.'s (MHPC's) data, to calculate the profit ratio using the actual profit of MHPC, rather than a construct; and 5) value coal using a domestic rather than import value. On June 10, 2005, the Court issued its opinion in Wuhan, remanding one issue to the Department (i.e., the Department's decision to value the coal input using import statistics (MSFTI data)), and affirming the Department on all other issues.

In remanding the decision, the Court, citing Hebei Metals (ordering Commerce to either "adhere to its conditional preference for domestic surrogate data or...state that it is deviating from this practice and provide a rational explanation for doing so"), instructed the Department to provide an explanation that reasonably supports its decision with respect to the use of import prices over domestic prices when valuing surrogates, in this case, the surrogate value for coal.

On August 11, 2005, the Department requested comments from the interested parties on its Draft Results of Redetermination. See Letters from Abdelali Elouaradia, Program Manager, Office 7, to Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt LLP and Collier Shannon Scott, dated August 11, 2005. The Department gave a deadline of August 22, 2005, for submitting comments. The Department did not receive any comments from the interested parties, and today issues its Final Results of Redetermination pursuant to the Court's remand order of June 10, 2005. The Department's analysis is below.

ANALYSIS

A. The Department selects surrogate values on a case-by-case basis.

In Wuhan at 21, the Court acknowledged that "Commerce does not have an 'unconditional preference' for using domestic prices over import prices when valuing surrogates..." See also Creatine Monohydrate from the People's Republic of China; Final Results of Antidumping Duty Review, 67 FR 10892 (March 11, 2002) and accompanying Issues and Decision Memorandum at Comment 1, and Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Ukraine, 67 FR 55785 (August 30, 2002) and accompanying Issues and Decision Memorandum at Comment 1. Rather, the Department has a stated practice of assessing surrogate value data and data sources on a case-by-case basis, and using where applicable, 1) investigation or review period-wide price averages, 2) prices specific to the input in question, 3) prices that are net of taxes and import duties, 4) prices that are contemporaneous with the period of investigation or review, and 5) publicly available data.

See Policy Bulletin 04.1, Non-Market Economy Surrogate Country Selection Process

(March 1, 2004) (Policy Bulletin 04.1) .

In valuing factors of production, section 773(c)(1) of the Tariff Act of 1930, as amended (the Act), instructs the Department to use “the best available information” from the appropriate market economy country. The Department’s regulations and preamble state that the Department normally makes this determination using “publicly available” information that is reflective of “numerous transactions between many buyers and sellers.” See Preamble to the Department’s regulations, 62 FR 27296, 27367 (May 19, 1997).

_____ In choosing the most appropriate surrogate values, the Department considers several factors, including the quality, specificity, and contemporaneity of the data. See Preliminary Results at 33102 and Fresh Garlic from the People’s Republic of China: Final Results of Antidumping Duty New Shipper Review, 67 FR 72139 (December 4, 2002) (Garlic from the PRC) and accompanying Issues and Decision Memorandum at Comment 6. As further noted in Garlic from the PRC, the Department prefers, whenever possible, to use country-wide data, and only to resort to company-specific information when country-wide data is not available.

- B. Based on independent research relating to TERI data, conducted for the Hebei Metals Remand, the Department finds that the 2001/2002 TERI data is the best information on the record of this proceeding with which to value coal.**

As explained in the Decision Memo for the final results of this new shipper review, the Department determined that the MSFTI data was the “best available” information to value steam coal “because it is quality, country-wide data specific to steam coal prices imported into India

during the POR, and is representative of competitive market prices.” See Decision Memo at 31. The Department added that it had rejected the TERI data because “it was derived from a single producer in India” and therefore was not representative of country-wide data. See Decision Memo at 34. Additionally, the Department stated that “it is not clear” how the listed prices in the TERI data are obtained. See id., citing Final Determination of Sales at Less Than Fair Value: Barium Carbonate from the People’s Republic of China, 68 FR 46577 (August 6, 2003) and accompanying Issues and Decision Memorandum at Comment 2.

Based on the independent research conducted by the Department for the Final Results of Redetermination Pursuant to Remand for Hebei Metals & Minerals Import & Export Corp. v. United States (July 20, 2005) (Hebei Metals Remand) (see Memorandum to The File from Angelica L. Mendoza and Dena Aliadinov, through Abdelali Elouaradia, regarding the Placement of the Final Results of Redetermination Pursuant to Remand for Hebei Metals & Minerals Import & Export Corp. v. United States (July 20, 2005) (Hebei Metals Remand) on the Record of this Redetermination, dated August 11, 2005, for a copy of the Hebei Metals Remand), the Department has determined that the TERI data are the best data available for valuing the coal input for purposes of Wuhan’s new shipper review. See Memorandum to The File from Angelica L. Mendoza and Dena Aliadinov, through Abdelali Elouaradia, regarding the Placement of the Memorandum from Salim Bhabhrawala to Wendy J. Frankel, Re: Research Regarding TERI Coal Prices for the Remand of the Antidumping Duty Investigation of Lawn and Garden Fence Posts from the People’s Republic of China (July 8, 2005) (Hebei Research Memo) on the Record of this Redetermination, dated August 11, 2005, for a copy of the Hebei Research Memo. The Department finds that, given all of the choices on the record, the TERI data best meet the

Department's criteria for selecting surrogate values, as set forth in Policy Bulletin 04.1 and explained in the Hebei Metals Remand. See Memorandum to The File from Angelica L. Mendoza and Dena Aliadinov, through Abdelali Elouaradia, regarding the Placement of the Final Results of Redetermination Pursuant to Remand for Hebei Metals & Minerals Import & Export Corp. v. United States (July 20, 2005) (Hebei Metals Remand) on the Record of this Redetermination, dated August 11, 2005, for a copy of the Hebei Metals Remand 10-11.

The Research Memo contains e-mail correspondence between the Department and TERI concerning the prices in the TERI data and how they are obtained. See Memorandum to The File from Angelica L. Mendoza and Dena Aliadinov, through Abdelali Elouaradia, regarding the Placement of the Memorandum from Salim Bhabhrawala to Wendy J. Frankel, Re: Research Regarding TERI Coal Prices for the Remand of the Antidumping Duty Investigation of Lawn and Garden Fence Posts from the People's Republic of China (July 8, 2005) (Hebei Research Memo) on the Record of this Redetermination, dated August 11, 2005, for a copy of the Hebei Research Memo at Attachment 2. Specifically, TERI states that the prices in its database are obtained directly from Coal India Limited, which produces more than 80 percent of India's coal. TERI further states that the prices represent coal prices from Coal India Limited's eight subsidiaries located throughout India.

Although the Department has some concerns about the monopolistic structure of the coal industry in India (see Memorandum to The File from Angelica L. Mendoza and Dena Aliadinov, through Abdelali Elouaradia, regarding the Placement of the Memorandum from Salim Bhabhrawala to Wendy J. Frankel, Re: Research Regarding TERI Coal Prices for the Remand of the Antidumping Duty Investigation of Lawn and Garden Fence Posts from the People's

Republic of China (July 8, 2005) (Hebei Research Memo) on the Record of this Redetermination, dated August 11, 2005, for a copy of the Hebei Research Memo at Attachment 1), the Department determines that the TERI steam coal pricing data are the best quality data because not only are they published, publicly-available data, but also because they are representative of the coal industry throughout India. Thus, the TERI data, as they are currently presented, are credible as a country-wide source of data.

With regard to specificity, the Department finds that the steam coal values listed in the TERI data are derived from actual sale prices of steam coal in India. With regard to contemporaneity, for those surrogate values not contemporaneous with the period of review, the Department adjusts for inflation using the wholesale price indices for India, as published in the International Monetary Fund's publication, International Financial Statistics. See Preliminary Results at 33102. Therefore, upon redetermination, the Department is using the average steam coal prices for grades A through D as reported in the TERI data (see Exhibit 6 of the Wuhan Bee Surrogate Value Submission) as the surrogate value for the coal input in this proceeding. When adjusted for inflation and converted to U.S. dollars, the average steam coal price per metric ton is \$22.75. See Id.

For all the reasons discussed above, and those noted in the Hebei Metals Remand (see Memorandum to The File from Angelica L. Mendoza and Dena Aliadinov, through Abdelali Elouaradia, regarding the Placement of the Final Results of Redetermination Pursuant to Remand for Hebei Metals & Minerals Import & Export Corp. v. United States (July 20, 2005) (Hebei Metals Remand) on the Record of this Redetermination, dated August 11, 2005, for a copy of the Hebei Metals Remand), the Department determines that the surrogate value

information from the TERI data offers the most accurate and reliable information for purposes of calculating Wuhan Bee’s normal value pursuant to section 351.408(c)(4) of the Department’s regulations. Because the data itself is the most representative of steam coal prices in India that are net of taxes, and is quality data that is specific to the sale of steam coal by an Indian coal producer, the Department concludes that the TERI data are the “best available” information on the record of this review for purposes of the valuation of steam coal.

RESULTS OF REMAND

As a result of the Department’s use of the TERI data to value the coal input, the recalculated weighted-average margin for the new shipper review for the period December 1, 2001, through May 31, 2002, is as follows:

Manufacturer/exporter	Weighted-Average Margin (percent)	
	<u>Final Results</u>	<u>Redetermination</u>
Wuhan Bee Healthy Co., Ltd.	32.84	32.63

These final results of redetermination pursuant to remand are in accordance with the Court's instructions in Wuhan.

Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

Date