TAIYAN ZIYANG FOOD COMPANY LTD. V. UNITED STATES,
CONSOL. COURT NO. 05-00399 (OCTOBER 5, 2005):
FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

Summary

The Department of Commerce ("the Department") has prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade ("CIT") in Taiyan Ziyang Food Company Ltd. v. United States, Consol. Court No. 05-00399 (October 5, 2005). The CIT granted the Department's request for a voluntary remand with respect to the labor wage rate for the People's Republic of China ("PRC") in Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 70 Fed. Reg. 34,082 (June 13, 2005) ("Final Results"), and accompanying Issues and Decisions Memorandum at Comment 12 ("Decision Memo"). The Department requested a voluntary remand so that it could: (1) amend the administrative record to include certain wage rate and other data that was briefly posted to the Department's website during the administrative review; and (2) reexamine its calculation of the PRC's expected wage rate. Pursuant to the Department's request for a voluntary remand and the Court's remand order, the Department has amended the record of the administrative review and has provided further explanation with respect to the omitted data, and corrected its 2004 calculation of expected non-market economy ("NME") wage rates.

Background

The Department's regulations provide that expected NME wage rates are calculated using regression analysis on an annual basis. See 19 C.F.R. 351.408(c)(3). The regression analysis is an analytical tool that is applied in the wage rate calculation to estimate the relationship between wage rates and national income (gross national income ("GNI") per capita) in market economy countries. In the autumn of each year, the Department conducts this regression analysis, and then uses the results of the regression and NME national income data to estimate expected NME wage rates.

As discussed below, in October 2004 the Department posted an updated wage rate dataset but did not rely upon this dataset when calculating expected NME wage rates for 2004. Instead, the Department erred in October 2004 by relying on the regression analysis from the prior year's (2003) calculation of expected NME wage rates.

The October 2004 wage rate dataset and expected NME wage rates posted in November 2004 was an attempt to correct the Department's error. However, the Department now recognizes that the November 2004 wage rate calculation was in error because the Department did not rely on the most recent data available.

In this remand, the Department first provides a full explanation of its methodology for calculating expected NME wage rates to better illustrate how the data posted in October 2004 and its calculation in November 2004 were inconsistent with the Department's normal methodology. The Department then describes the errors that occurred in its calculation of expected wage rates in 2004. Finally, the Department has recalculated expected NME wage rates consistent with its normal methodology, based upon the data that was available as of December 2004.

The NME Wage Rate Methodology

The following is an explanation of the Department's normal methodology as applied for the past several years to arrive at the expected NME wage rates. See "Expected Wages of Selected NME Countries" under "Reference Material" at http://ia.ita.doc.gov.

The Department's regulations generally describe the methodology by which the Department calculates expected NME wage rates:

> For labor, the Secretary will use regression-based wage rates reflective of the observed relationship between wages and national income in market economy countries. The Secretary will calculate the wage rate to be applied in nonmarket economy proceedings each year. The calculation will be based on current data, and will be made available to the public.

19 CFR 351.408(c)(3).

In accordance with 19 CFR 351.408(c)(3), the Department annually calculates expected NME wage rates in two steps. First, the Department uses regression analysis[1] to estimate a linear relationship between per-capita GNI and hourly wage rates in market economy ("ME") countries. Second, the Department uses the results of the regression and NME GNI data to estimate hourly wage rates for NME countries.

There is normally a two-year interval between the current year and the most recent reporting year of the data required for this methodology due to the practices of the respective data sources. The Department bases its regression analysis on this most recent reporting year, which the Department refers to as the "Base Year." For example, the Department relied upon 2001 data to calculate expected NME wage rates in 2003, *i.e.*, 2001 is the "Base Year" for the 2003 calculation. In practice, the "Base Year," *i.e.*, the

[1] Ordinary least squares method.

year upon which the regression data are based, is two years prior to the year in which the Department conducts its regression analysis.

1. Regression Analysis

The Department's analysis relies upon four separate data series: (A) country-specific wage rate data for 56 countries from Chapter 5B of the International Labour Organization's ("ILO") Yearbook of Labour Statistics; (B) country-specific consumer price index ("CPI") data from the International Financial Statistics of the International Monetary Fund ("IMF"); (C) exchange rate data from the IMF's International Financial Statistics; and (D) country-specific GNI data from the World Development Indicators of the World Bank.

The wage rate data described above are converted to hourly wage rates and adjusted using CPI data so that they are representative of the current Base Year. The data are then converted to U.S. dollars using the appropriate exchange rate data. These adjusted wage rate data are ultimately regressed on GNI, as discussed herein.

The following sections describe each data series and how it is used.

(A) Wage Rate Data

For each of 56 countries, the Department chooses a single wage rate that is the broadest measure of wage rates for that country that is most contemporaneous with the Base Year.

To arrive at such a wage rate for each country from among the many wage rates included in the ILO database for each country, the Department prioritizes the following ILO data parameters[2] in the following order:

1. "Sex," *i.e.*, male/female coverage;
2. "Sub-Classification," *i.e.*, coverage of different types of industry;
3. "Worker Coverage," *i.e.*, coverage of different types of workers, such as wage earners or salaried employees;
4. "Type of Data," *i.e.*, the unit of time for which the wage is reported, such as per hour or per month; and,
5. "Source ID," *i.e.*, a code for the source of the data.

Under the above hierarchy, the Department first looks to the parameter for gender. For the "Sex" parameter, the Department always chooses data that cover both men and women.[3]

Second, for the "Sub-Classification" parameter, the Department chooses in each instance data that cover all reported industries in a given country (indicated in the database by a value of "Total" for the "Sub-Classification" parameter).

When a wage rate that meets these two criteria (for "Sex" and "Sub-Classification") is not available for the Base Year, the Department will use the most recently available data no more than five years prior to the Base Year, thereby considering a total of six years of data. For example, when the Base Year was 2001, the

[2] Each data point in the ILO database is accompanied by values for each of a number of parameters that describe the characteristics of the data. These parameters include those enumerated above, and also include two other parameters: "Source," *i.e.*, the original survey source of the data and "Classification," *i.e.*, the industrial classification.

[3] The Department does not consider values of "Indices, Men and Women" for this parameter.

Department used the data reported for the most recent year between the years of 1996 and 2001.

The Department does not choose wage rate data that do not meet the requirements for “Sex” and “Sub-Classification” described above. If there is more than one record in the ILO database that meets those requirements, the Department looks to the remaining parameters. Once the Department’s requirements for these two parameters are satisfied, the Department then prioritizes data that are closest to the Base Year with respect to the remaining ILO parameters discussed below.

For example, for the third parameter, the Department generally prioritizes “wage earners,” “employees” and “total employment,” in that order for the parameter “Worker Coverage.” However, the Department would choose more contemporaneous “employees” data over less contemporaneous “wage earner” data if those data were available.

Fourth, when the values for all other parameters are equal, the Department prioritizes data reported on an hourly basis over that reported on a monthly or weekly basis for the parameter “Type of Data.”

Fifth, if necessary, the Department prioritizes data with a “Source ID” value of “1” over “2” or “3.”

Finally, it is the Department’s normal practice to eliminate aberrational values (*i.e.*, values that vary in either direction in the extreme from year to year) from the wage rate dataset.

The ILO data that are not reported on an hourly basis are converted to an hourly basis assuming that there are eight working hours per day, 44 working hours per week and 192 working hours per month.

(B) CPI Data

Once hourly figures have been calculated based on the wage rate data discussed above, the wage rates are adjusted to the Base Year on the basis of the CPI for each country, as needed, and as reported by the IMF's International Financial Statistics.

(C) Exchange Rate Data

The above inflation-adjusted wage data, which are denominated in the national currency of their country, are then converted to U.S. dollars using Base Year period-average exchange rates reported by the IMF's International Financial Statistics.

Thus, using (A) wage rate data, (B) CPI data and (C) exchange rate data, discussed above, the Department arrives at hourly wage rates, denominated in U.S. dollars and adjusted for inflation for each of the 56 countries for which all the above data are available.

(D) GNI Data

The Department uses Base Year GNI data for each of the 56 countries in the Department's analysis, as reported by the World Bank. GNI data are denominated in U.S. dollars current for the Base Year. The World Bank defines GNI per capita as gross national product ("GNP") per capita and further explains that this measure "reflects the average income of a country's citizens." See http://www.worldbank.org/depweb/english/modules/glossary.html.

The Department conducts its regression analysis using the Base Year wages per hour in U.S. dollars discussed above and Base Year GNI per capita in U.S. dollars to arrive at the following equation: Wage_i = Y-intercept + X-coefficient * GNI. The X-coefficient describes the slope of the line estimated by the regression analysis, while the Y-intercept is the point on the Y-axis where the line intercepts the Y-axis. The results of this regression analysis describe generally the relationship between hourly wage rates and GNI.

2. Application of Regression Results to NME GNI Data

The Department applies the Base Year GNI for each NME to the equation presented above to arrive at an estimated wage rate for the NME. This application is done for each NME.

2004 Labor Wage Rate Calculation

When the Department posts its calculation of expected NME wage rates to the Import Administration ("IA") website, it includes four major elements: (1) the wage rate dataset ("wage rate dataset"), which includes wage rate data for 56 countries from the ILO, adjusted to Base Year U.S. dollar figures; (2) the GNI dataset ("GNI dataset"), which includes the corresponding GNI data for 56 countries; (3) the results of the regression analysis ("regression results"); and (4) a schedule of expected NME wage rates. Regrettably, the Department's 2004 calculation of expected NME wage rates, as posted to the IA website in October 2004, and again in November 2004, both contained errors.

Data Posted in October 2004

In calculating the expected NME wage rates for the October 2004 posting, the Department first erred by using the regression results from the 2003 calculation of expected NME wage rates rather than conducting a new regression analysis. (Note: the 2003 regression results were based on 2001 data). This error occurred because the Department inadvertently used computer spreadsheet files from the 2003 calculation, and did not rely on data available in 2004. Thus, for the October 2004 calculation, the Department mistakenly did not rely on the most current data for its regression analysis, but rather used data from the previous year. While the relationship between wage rates and per capita GNI estimated by the Department's regression analysis is relatively stable over time, the Department's reliance on a non-current regression analysis was an unintended departure from past practice.

In addition, in the same October 2004 posting, the Department included an updated wage rate dataset that would have otherwise formed the basis for a new regression analysis if the Department had not committed the error discussed above. Normally, the Department will post the dataset that it actually relied upon to calculate the wage rate. However, in the instant case, while the Department intended to rely on the data available in 2004, it actually relied on a dataset from 2003, but posted a dataset from 2004 to its website. Thus, the data posted in October 2004 did not accurately reflect the data the Department relied on to arrive at its calculation of expected NME wage rates.

When the Department realized that the wage rate dataset that had been posted to the IA website was not the dataset it relied upon to arrive at its calculation, it promptly removed the dataset from its website, and posted, in November 2004, the dataset corresponding to the 2003 regression analysis. This was not addressed or explained on the Department's website or on the administrative record of the ninth administrative review of the antidumping duty order on garlic from the PRC ("Garlic AR9"). A hard copy print-out of the dataset posted in October 2004 was also never placed on the administrative record of Garlic AR9.

Data Posted In November 2004

In an effort to promptly correct its error, the Department replaced the October 2004 wage rate dataset with the wage rate dataset from 2003, which had actually formed the basis of its 2004 calculation of expected NME wage rates. The Department did not, however, conduct a new regression analysis based on the most current data available, as it would normally do in its annual calculation of the expected wage rate. Instead, the Department continued to rely upon the 2003 regression analysis. In sum, in November 2004, the Department corrected the website posting by providing the data actually relied on to reach its calculation, but the calculation remained flawed because the Department did not conduct a new regression analysis with updated data.

Re-Examination and Recalculation

The Department has now applied to the calculation of expected NME wages for certain respondents[4] in Garlic AR9 the dataset originally posted by the Department to the IA website in October 2004. This dataset is attached to these remand results at Exhibit II. Although not on the record during the course of the administrative review, these data were available on the IA website during the administrative review, and were the subject of comments filed by Respondents. See Decision Memo, at Comment 12. These data should have been included on the administrative record of the proceeding.

Upon full review of the administrative record of this proceeding pursuant to this remand, the Department now realizes that its November 2004 calculation of expected NME wage rates was also not in accordance with the Department's methodology for the calculation of expected NME wage rates. The Department's reliance upon the 2003 regression analysis was inappropriate in the face of the availability of more current data for an updated regression analysis.

The Department has also re-examined the wage rate dataset posted to the IA website in October 2004; and its calculation of expected NME wage rates as posted to the IA website in November 2004 and as used in the Garlic AR9. The Department has determined that the October 2004 wage rate dataset, as posted, cannot be used for the expected wage rate calculation because it contains at least five types of errors, each of which represents a departure from the Department's methodology for the calculation of expected NME wage rates.

[4] See "Affected Respondents," below.

First, as discussed above, the Department normally adjusts the ILO wage rate data to Base Year figures. The factors used to make this adjustment in the October 2004 wage rate dataset were not correct for the following countries: Argentina, Austria, Belgium, Bolivia, Costa Rica, Ecuador, France, Greece, Guatemala, India, Jordan, Kenya, Malaysia, Netherlands, Pakistan, Philippines, Switzerland, Thailand and Turkey.

Second, as discussed above, the Department normally converts the ILO wage rate data for 56 countries from data denominated in the national currency of a given country that is expressed on an hourly, daily, weekly or monthly basis to data denominated in Base Year U.S. dollars expressed on an hourly basis. The Department uses a period-average exchange rate to make this conversion. The exchange rate used for these adjustments in the October 2004 wage rate dataset was an end-of-period exchange rate, rather than a period average exchange rate.

Third, while the Department's practice is to include data no more than five years older than the Base Year, the wage rate dataset posted to the IA website in October 2004 includes ILO data for Algeria that are more than five years older than the Base Year.

Fourth, the wage rate dataset includes ILO wage rate data for up to eighteen countries that do not appear to have been selected in accordance with the Department's selection criteria for ILO wage rate data, discussed above.

Finally, the wage rate dataset includes a wage rate of USD0.00 for Nicaragua, which is contrary to the Department's practice. The Department does not normally include wage rates of USD 0.00 in its regression analysis.

The above errors demonstrate that the October 2004 wage rate dataset was not compiled in accordance with the Department's normal methodology for the calculation of expected NME wage rates. Because of these errors, the Department is unable to rely on this dataset for its recalculation of expected NME wage rates in this case.

The Department has recalculated its expected NME wage rates using its normal methodology, described above. In order to perform the calculation of expected NME wage rates as it would have been calculated in 2004, the Department has used the data available as of December 2004. See Exhibit I.

For this recalculation, Algeria and Zimbabwe, two of the 56 countries, have been excluded from the Department's regression analysis. The Department has excluded Algeria from the regression analysis because ILO wage rate data were not available for Algeria from the period considered by the Department under its methodology. The Department has also excluded Zimbabwe because its 2002 GNI data were not available.

As noted in the ILO database, the wage rates for Turkey and Korea, two of the 56 countries, are denominated in units of 1,000 of their respective national currency, and have been converted accordingly.

While the ILO database indicates that wage rate data for Greece and the Netherlands, two of the 56 countries, are denominated in euros, the notes to the ILO database indicate that these wage rates are denominated in drachmas and guilders, respectively. Because appropriate exchange rates were not available in the IMF's International Financial Statistics for Greece and the Netherlands, the Department relied on the exchange rate information that it regularly obtains from Dow Jones B.I.S. and the U.S. Federal Reserve and posts on the IA web site for these countries. Thus, the Department has calculated the annual 2002 average exchange rates for Greek drachmas and Dutch guilders, which were 0.00275 U.S. dollars per drachma and 0.42517 U.S. dollars per guilder.

Comments

The Department issued its draft results of redetermination to interested parties on November 8, 2005, and provided parties with an opportunity to comment. On November 14, 2005, Plaintiffs[5] filed comments on the Department's draft results. No other party to this proceeding filed comments.

Plaintiffs' Comments

Plaintiffs argue that the Department's calculation of expected NME wages continues to be flawed because, in Plaintiffs' view, it arbitrarily excludes available data. Specifically, Plaintiffs assert that the Department has wrongly excluded 22 countries from its regression analysis for which data are available. Plaintiffs cite the preamble to the Department's regulations, which addresses the Department's preference for "more data,"[6] and argue that using anything less than the full range of available data in the Department's regression analysis results in a biased and distorted outcome.

Plaintiffs maintain that the validity of the Department's reasoning in adopting its regression-based methodology is therefore called into question, as the exclusion of data negates the aims of accuracy, fairness and predictability that underlie the methodology.

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[5] Plaintiffs include: Zhengzhou Harmoni Spice Co., Ltd. ("Harmoni"); Jinan Yipin Corporation, Ltd. ("Jinan Yipin"); Linshu Dading Private Agricultural Products Co., Ltd. ("Linshu Dading"); Sunny Import & Export Ltd. ("Sunny"); Taiyan Ziyang Food Company Ltd. ("Ziyang"); and Taian Fook Huat Tong Kee Foodstuffs Co., Ltd. ("FHTK").

[6] See Antidumping Duties; Countervailing Duties; Final Rule, 62 Fed. Reg. 27296 (May 19, 1997) ("Final Rule")

Plaintiffs therefore urge that the Department revise its 2002 calculation of expected NME wages by including all countries in the Department's regression analysis for which data are available.

Plaintiffs also argue that the Department should immediately instruct U.S. Customs and Border Protection ("CBP") to revise the cash deposit rates affected by these results according to remand. Plaintiffs note that the average change in the cash deposit rate for the affected companies is 22 per cent, and that this error had been acknowledged and identified by the Department as early as August 1, 2005 in Dorbest Limited v. United States, Court No. 05-0003 and Lacquer Craft Manufacturing Company Ltd. v. United States, Court No. 05-00083.

Department's Position

Concerning Plaintiff's argument that the Department's calculation of expected NME wages continues to be flawed, the Department disagrees. Pursuant to its request for a voluntary remand, the Department placed data on the administrative record, and corrected and explained errors that occurred during its 2004 wage rate calculation. The purpose of the voluntary remand was not to make changes to an established methodology that the Department has employed for several years, but to correct inadvertent departures from its normal methodology that occurred during the wage rate calculation in October 2004.

Section 19 U.S.C. § 1677b(c)(1) provides the general methodology for the Department to determine normal value for NME countries on the basis of the factors of production using the best available information from either a single market economy country or "countries considered to be appropriate by the administrative authority." Furthermore, Section 19 C.F.R. 351.408(c)(2) of the Department's regulations expressly states that "except for labor" all factors of production shall be calculated using valuations from a single country. This exception is further consistent with 19 U.S.C. § 1677b(c)(4), which qualifies that the Department will use, to the extent possible, prices from "one or more market economies." During the rule-making process, the Department explained how the regulation's language is consistent with the statute, and how the use of an average wage rate contributes to both the fairness and the predictability of NME proceedings. See Antidumping Duties; Countervailing Duties; Proposed Rule, 61 Fed. Reg. 7308, 7345 (February 27, 1996) ("Proposed Rule"); Final Rule at 27367.

During the Department's rule-making process, parties had an opportunity to comment on the Department's methodology for valuing labor. Indeed, the Department addressed the arguments made by the Plaintiffs in this proceeding in its Final Rule. The Department explained that the regression-based wage rate, which combines data from more than one country, significantly enhances the accuracy, fairness and predictability of the antidumping calculation. See Final Rule, 62 Fed. Reg. at 27296. The Department further explained the advantage of its methodology is that the valuation of the wage rate will not vary depending on which country the Department selects as the economically comparable surrogate country and the results of the regression are available to all parties, thus enhancing the predictability of the labor value in all NME cases. Id. Given these attributes of the regression-based wage rate, the Department concluded that 19 C.F.R. 408(c)(3) is fully consistent with the statute. Id.

A change in the Department's methodology for the calculation of expected NME wages, including which countries to include in the Department's regression analysis, is a broad issue that should be subject to comment from all practitioners and interested parties. In its Final Results in this case, in response to arguments addressing the labor wage rate methodology, the Department explained that any significant change in its methodology would be subject to public comment, and that it would be inappropriate to make such a significant change in the context of one investigation. See Decision Memo at Comment 12. The Department is currently engaged in a broader process by which it is soliciting comments on potential improvements to its methodology for the calculation of expected NME wages from all interested parties. See Expected Non-Market Economy Wages: Request for Comment on Calculation Methodology, 70 Fed. Reg. 37,761 (June 30, 2005).

The methodology employed in the Department's recalculation pursuant to the Department's voluntary remand is a long-established methodology for the wage rate calculation, is in accordance with the statute and the Department's regulations, and reflects the best available information. Further, the Department's current methodology carries all the aforementioned advantages of accuracy, fairness and predictability, and was subject to public comment at the time of the Department's Final Rule.

Concerning Plaintiff's argument that the Department should revise its instructions to CBP in accordance with these results according to remand, the Department disagrees. Because a final and conclusive court decision has not been reached in this matter, it is not within the Department's authority to issue new instructions to CBP implementing the results of a remand redetermination. Despite Plaintiffs' characterization of the

Department's abilities with respect to the wooden bedroom furniture litigation, the Department notes that in the corresponding litigation, Dorbest Limited v. United States, Court No. 05-0003 and Lacquer Craft Manufacturing Company Ltd. v. United States, Court No. 05-00083, the CIT has made no final and conclusive decision in these cases. The Department, therefore, will not issue revised instructions to CBP on this matter at this time.

Affected Respondents

During the Garlic AR9, Plaintiffs challenged the Department on its use of the expected NME wage rate for China as calculated in October 2004. See Letter from Linshu Dading Private Agricultural Products Co., Ltd.; Sunny Import & Export Ltd.; Jinan Yipin Corporation, Ltd.; and Zhengzhou Harmoni Spice Co., Ltd. Regarding Administrative Case Brief, dated April 21, 2005 ("GDLSK Administrative Brief"); Letter from Taian Fook Huat Tong Kee Foodstuffs Co., Ltd., dated April 29, 2005 ("FHTK Administrative Brief"); and Letter from Taiyan Ziyang Food Company Ltd., dated April 29, 2005 ("Ziyang Administrative Brief"). Subsequently, Plaintiffs have challenged the Department's Final Results before the CIT in the instant proceeding. Because Plaintiffs have exhausted their administrative remedies, the Department, in these remand results, has recalculated the antidumping duty margins for these respondents.

Final Results of Redetermination

The Department has reexamined and recalculated its 2004 calculation of expected NME wage rates. Following this reexamination and recalculation, the expected wage rate for the PRC for this proceeding is USD 0.85 per hour. See Exhibit III. Consequently, the antidumping duty margins for Harmoni, Jinan Yipin, Linshu Dading, Sunny, Ziyang, and FHTK, are as follows.[7]

Respondent	Amended Final Results	Final Results According to Remand
Harmoni	14.20%	8.79%
Jinan Yipin	15.92%	13.21%
Linshu Dading	10.78%	7.97%
Sunny	10.86%	9.17%
Ziyang	15.09%	12.58%
FHTK	19.68%	15.75%

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Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

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Date

[7] The PRC-wide rate is unaffected by these results according to remand because its calculation was not based on the antidumping duty margins of these respondents.

Appendix I: List of Exhibits

Exhibit I: Data Available as of December 2004

Exhibit II: Dataset Originally Posted by the Department to the IA website in October 2004

Exhibit III: Revised 2004 Calculation of Expected NME Wage Rates