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ZHEJIANG NATIVE PRODUCE & ANIMAL BY-PRODUCTS IMPORT & EXPORT CORP., ET AL. v. UNITED STATES
Court No. 02-00057
Slip Op. 11-110 (September 6, 2011)

FINAL RESULTS OF REDETERMINATION PURSUANT TO REMAND

BACKGROUND

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 ("CIT" or "the Court") (*Zhejiang Native Produce & Animal By-Products Import & Export Corp., et al., vs. United States*, Slip Op. 11-110 (September 6, 2011) ("*Zhejiang V*")). The Department provided an extensive background of this case in its most recent results of redetermination pursuant to remand. *See Zhejiang Native Produce & Animal By-Products Import & Export Corp., et al., v. United States*, Results of Redetermination Pursuant to Remand, December 8, 2010 ("2010 Remand Redetermination") at 2-8.

This case concerns the Department's critical circumstances determination in the investigation of Honey from the People's Republic of China ("PRC"), covering the period January 1, 2000, through June 30, 2000. *See Notice of Final Determination of Sales at Less than Fair Value; Honey from the People's Republic of China*, 66 FR 50608 (October 4, 2001) ("*Final Determination*"). The Department issued the 2010 Remand Redetermination in response to the CIT's decision in *Zhejiang Native Produce & Animal By-Products Import & Export Corp., et al. v. United States*, 32 Int'l Trade Rep. (BNA) 1281 (March 24, 2010) ("*Zhejiang IV*"). In its

determination, the Department examined prices of honey from the PRC during a 190-day period after the termination of the applicable suspension agreement, and then imputed knowledge of dumping on importers based on the fact that 1) the initiation of the investigation should have put importers on notice that the prices established by the terminated suspension agreement might be dumped prices, and 2) prices during the 190-day period were, on average, more than 25 percent below the Normal Value ("NV") calculated during the investigation for honey from the PRC.

On September 6, 2011, the CIT issued a decision finding that this determination was not supported by substantial evidence. *See Zhejiang V*. Specifically, the Court remanded the issue, noting that the agency "had other evidentiary tools that it might have used to produce the substantial evidence needed to make its case," such as evidence demonstrating honey importers had actual knowledge of honey prices from non-Chinese sources. *See Zhejiang V*, Slip-Op. 11-110 at *23. As it did in *Zhejiang IV*, the Court highlighted the methodology used by the Department in its critical circumstances determination in the investigation of potassium permanganate from the PRC. *See Final Determination of Sales at Less Than Fair Value; Potassium Permanganate from the People's Republic of China*, 48 FR 54347 (December 29, 1983) ("*Potassium Permanganate*"); *ICC Industries, Inc. v. United States*, 632 F. Supp. 36 (March 19, 1986) (upholding the Department's determination) ("*ICC Industries I*"); *ICC Industries, Inc. v. United States*, 812 F.2d 694 (February 11, 1987) (affirming the CIT's decision) ("*ICC Industries II*"). Citing *Potassium Permanganate*, the Court noted that in prior critical circumstances determinations, the Department had based its affirmative critical circumstances determination on the agency's finding that "importers were actually aware of the pricing of the merchandise for non-Chinese sources, and were, therefore, 'aware of the entire range of pricing

in a marketplace where pricing was a major factor in determining sales.'" *See Zhejiang V* at *23. Similarly, citing *Nippon Steel Corp. v. United States*, 24 CIT 1158, 118 F. Supp. 2d 1366 (2000) ("*Nippon*"), the Court noted that the Department's critical circumstances determination had been supported by "numerous press reports" and "falling domestic prices resulting from rising imports." *Id.* (citing *Nippon* 24 CIT at 1168). Accordingly, the Court remanded the instant case holding that the Department's finding was not supported by substantial evidence.

In accordance with the Court's remand order the Department has re-examined the issue of critical circumstances, considering all of the record evidence submitted by parties in the investigation and remand proceedings, in order to determine whether importers of honey from the PRC knew, or should have known, that PRC honey was being sold at less-than-fair-value ("LTFV"). As discussed below, we do not find that importers knew or should have known that imports of subject merchandise exported by Zhejiang Native Produce & Animal By-Products Import & Export Corp. ("Zhejiang"), Kunshan Foreign Trade Co. ("Kunshan"), High Hope International Group Jiangsu Foodstuffs Import & Export Corporation ("High Hope"), or the PRC-Wide entity, were at LTFV prices. Thus, we do not find that critical circumstances exist. Our findings are discussed below in detail.

BACKGROUND

The Department provided a comprehensive overview of the history of this proceeding, as well as a description of the Department's normal methodology for finding critical circumstances, in *Zhejiang IV*. *See Zhejiang IV* at 2-8. Subsequent to the decision by the CIT in *Zhejiang V*, the Department again conducted an analysis of the information on the record in light of *Zhejiang V*

and issued a draft redetermination on December 16, 2011, for comment. *See* Preliminary Results of Redetermination Pursuant to Remand in *Zhejiang Native Produce & Animal By-Products Import & Export Corp., et al., vs. United States*, Court No. 02-00057, Slip Op. 11-110 (September 6, 2011) ("Draft Redetermination"). The Department requested that interested parties provide comments by December 23, 2011.

On December 19, 2011, the American Honey Producers Association and the Sioux Honey Association ("petitioners") requested that the Department extend the deadline for filing comments on the Draft Redetermination by two weeks, or until January 6, 2012. In response, the Department issued a letter to all parties granting a partial extension of time to submit comments to December 28, 2011. [1] Additionally, the Department petitioned the Court for an extension to submit remand results by no later than February 20, 2012.

On December 22, 2011, petitioners again reiterated their request for an extension to provide comments until January 6, 2012. Petitioners stated that the CIT was going to grant the extension request for the submission of the remand results and again stated that petitioners needed more time to analyze the Draft Redetermination and provide meaningful comments. The Department granted the request and extended the deadline for parties to submit comments on the Draft Redetermination until January 6, 2012.

On January 6, 2012, both petitioners and Zhejiang Native Produce & Animal By-Products Import & Export Corp., *et. al*. ("respondents") submitted comments on the Draft Redetermination. *See* Letter from Kelley Drye & Warren to the Secretary of Commerce, dated January 6, 2012 ("Petitioners' Draft Comments"). *See also* Letter from Grunfeld, Desiderio,

Lebowitz, Silverman & Klestadt to the Secretary of Commerce, dated January 6, 2012 ("Respondents' Draft Comments").

Also on January 6, 2012, petitioners filed a letter containing new factual information. Petitioners stated that since the CIT invited the Department to use its discretion to re-open the record, and that knowledge of third-country pricing of honey imports appeared to be the central issue in the remand redetermination, "procedural fairness requires that the Department provide the parties with an opportunity to place additional evidence on the record." *See* Letter from Kelley Drye & Warren to the Secretary of Commerce, dated January 6, 2012 ("Petitioners' First Factual Submission") at 2-3. Petitioners asked that the Department accept this new information. *Id*. at 4.

On January 11, 2012, respondents filed a letter objecting to petitioners' new information filing and requesting that the Department reject the new information. *See* Letter from Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt to the Secretary of Commerce, dated January 11, 2012, at 2-3. Respondents aver that, should the Department nevertheless consider the information, such information nevertheless supports a negative finding of critical circumstances. *Id*. at 4.

On January 12, 2012, the Department issued a letter to all interested parties informing parties of the Department's decision to re-open the record on a limited basis and to solicit information "concerning importers' knowledge of prices of honey from all sources imported into the United States during the time period after August 16, 2000." *See* Letter from the Department of Commerce To All Interested Parties, dated January 12, 2012, at 2. The Department stated that

[1] In *Zhejiang V*, the CIT stated that remand results were due to the Court on or before January 6, 2012.

it would accept Petitioners' First Factual Submission, and requested that parties file any further information on the record by January 19, 2012. The Department further stated that any rebuttal comments from parties were due no later than January 24, 2012. *Id*.

On January 19, 2012, petitioners submitted new factual information on the record, including United States pricing data on honey, trade journal articles, and testimony from the investigation at the International Trade Commission ("ITC"). *See* Letter from Kelley Drye & Warren to the Secretary of Commerce, dated January 19, 2012 ("Petitioners' Second Factual Submission").

Also on January 19, 2012, respondents submitted new factual information purporting to contain an affidavit from an importer. Respondents also reiterated their vigorous objection to the Department's reopening of the record in this proceeding. *See* Petitioners' Second Factual Submission at 2.

On January 20, 2012, petitioners submitted a letter correcting certain references in Petitioners' Second Factual Submission.

On January 23, 2012, respondents submitted a letter requesting that the Department reject Petitioners' Second Factual Submission (January 23, 2012, Letter). Respondents argue that petitioners had ample opportunity in previous remands to submit this information but had not done so. Respondents also noted that portions of Petitioners' Second Factual Submission were illegible. *See* January 23, 2012, Letter at 1. Respondents requested, should the Department not reject the new information, that the Department extend the deadline date for rebuttal comments to January 31, 2012. *Id*. at 2.

On January 24, 2012, the Department issued a letter to interested parties. The letter requested that petitioners resubmit portions of the Petitioners' Second Factual Submission that were illegible. Additionally, the letter extended the deadline for filing rebuttal comments to January 27, 2012.

Also on January 24, 2012, respondents filed a letter (Respondents' Factual Submission) correcting certain errors in their January 19, 2012, letter. The letter contained the affidavit from an importer of honey from the PRC, which was mistakenly left out of the January 19, 2012, submission.

Subsequently, also on January 24, 2012, petitioners filed a letter asking that the Department reject both respondents' January 19, 2012, letter as well as Respondents' Factual Submission. The submission also contained further arguments by petitioners with respect to knowledge by importers of prices of honey from the PRC and other sources after the termination of the suspension agreement. *See* Letter from Kelley Drye & Warren to the Secretary of Commerce, dated January 24, 2012 (Petitioners' Rejection Request Letter). Petitioners stated that respondents' January 19, 2012, letter contained neither the purported affidavit nor the proper certifications. *See* Petitioners' Rejection Request Letter at 2. Petitioners did note that respondents had filed the affidavit as part of Respondents' Factual Submission. *Id.* Nevertheless, petitioners urged the Department to reject respondents' submissions completely. Petitioners argued that the letters were untimely, and that the information contained in Respondents' Factual Submission is "not appropriate for inclusion in the record because it is not information that was available to the Department during the original investigation in the relevant period after August 16, 2000 through May 11, 2001." *Id*. at 3-4.

Finally, on January 24, 2012, respondents filed another letter providing the proper certifications for the January 19, 2012, letter and the Respondents' Factual Submission.

On January 25, 2012, in response to the Department's January 24, 2012, letter, petitioners re-filed the legible copies of the sections in the Petitioners' Second Factual Submission that were illegible. Separately, petitioners filed a letter on January 25, 2012, which contained information that petitioners indicated was intended to be filed with the January 19, 2012, submission (Petitioners' Third Factual Submission).

On January 27, 2012, respondents filed a rebuttal brief. *See* Letter from Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt to the Secretary of Commerce, dated January 11, 2012 (Respondents' Rebuttal Brief).

On January 30, 2012, respondents filed a letter requesting that the Department reject petitioners' request that we reject Respondents' Factual Submission.

SUMMARY OF ARGUMENTS

Petitioners' Draft Comments argue that the record evidence on which the Department based its Draft Redetermination contains sufficient information for the Department to make an affirmative critical circumstances determination. Petitioners urge that the Department apply the methodology and analysis used in *Potassium Permanganate* and *Nippon* to this redetermination, stating that the case "presents highly unusual circumstances in which the Department's usual methodology is unavailable." *See* Petitioners' Draft Comments at 5. Petitioners further argue that available record evidence provides evidence of importer knowledge of import pricing and dumping. Petitioners contend that the surge in imports of honey from the PRC after the initiation

of the investigation is evidence that importers knew, or should have known, that imports of honey from the PRC were likely to have been dumped. *Id*. at 6-8. Additionally, petitioners believe that the ITC's preliminary investigation provided information showing that importers had knowledge of a broad range of prices of honey from various sources. Petitioners note that the ITC preliminarily found a reasonable indication of linkage between underselling, the increased volume of imports, and declining prices in the United States, with margins as high as 19.8 percent. *Id*. at 9. Petitioners argue that this linkage is similar to a factor used in *Nippon* to find critical circumstances. *Id*. at 9-10. With respect to the testimony of importers, petitioners aver that the Department's reading on the issue of knowledge of prices (*i.e.*, that the testimony only demonstrated a knowledge of PRC honey prices) is too narrow, and that the testimony is indicative of a more detailed knowledge of import pricing. *Id*. at 12. With respect to the newspaper articles on the record prior to the Draft Redetermination, petitioners assert that the publication of these articles indicates that parties should have been aware of the end of the suspension agreement as well as aware of U.S. honey producers' intentions to file antidumping duty cases. *Id*. at 13-14. Additionally, petitioners assert that the articles provided honey importers with knowledge that the import prices from the two largest sources of imports (the PRC and Argentina) were considered to be low. *Id*. at 14. Petitioners also note that Exhibit 5 of their May 25, 2010, submission (submitted as part of the record in *Zhejiang IV*) contains average unit values (AUVs) from the PRC, Argentina, and other "fairly traded" sources that indicate PRC import prices were "ranged from 14.3 to 32.2 percent below those from fairly-traded sources." *Id*. at 17.

Finally, petitioners argue that the Department does not need to find that importers had

actual knowledge of dumping in order to make an affirmative critical circumstances determination. Petitioners aver that the Department may impute knowledge of dumping by using other evidentiary tools rather than relying only on prices. Petitioners state that the record evidence prior to the Draft Redetermination, which included "evidence of importers knowledge of market pricing for subject and non-subject imports of significant underselling (price differentials) by the imported Chinese honey of domestic and fair value honey apparent from the AUVs in the import data, the ITC underselling data and the press reports, provide the substantial evidence that supports the Department's finding of critical circumstances." *Id*. With respect to the question of knowledge of dumping, petitioners note that "{W}hen the Department employs its 25 percent test to sales that occurred prior to the initiation of a dumping investigation, it is not finding that importers had actual knowledge of dumping. It is imputing knowledge of dumping based on the size of the dumping margin calculated after the fact, and that imputation of knowledge has generally been upheld by the courts." *Id*. at 16. Petitioners further state that "It is never possible for an importer to have certain knowledge of dumping because they do not have access either to the foreign producers' home market sales prices or costs, or in the case of China, to the factors of production and surrogate value information that would be used to calculate a dumping margin. This has never been a bar to the finding of knowledge of dumping under any of the critical circumstances test that the Department has employed, however." *Id*. at 15-16.

Respondents' Draft Comments support the Department's finding in the Draft Redetermination, for the following reasons. First, respondents state that the CIT's decision in *Zhejiang V* precluded the Department from imputing knowledge of dumping based on the initiation of the antidumping duty investigation. Second, respondents believe that *Zhejiang V*

required that the Department "recognize that importers of Chinese honey could rely on Post Petition Period prices which were 'broadly the same, or slightly higher' than prices paid during the Suspension Agreement 'as not being the prices of goods sold at less than fair value.'" *See* Respondents' Draft Comments at 3. Respondents examine Petitioners' May 25, 2010, submission in light of *Zhejiang IV* and conclude that the evidence in this submission supports a negative critical circumstances determination for the following reasons; 1) the prices paid by importers were broadly the same, or slightly higher, in the post petition period than they had been during the suspension agreement; 2) the fact that PRC honey prices were lower than U.S. prices and that PRC honey prices were injuring the U.S. honey industry does not, in itself, indicate that PRC honey was being sold at LTFV; and, 3) that the articles submitted by petitioners do not provide information regarding LTFV pricing in the period after the suspension agreement and thus cannot be used to input knowledge of dumping. *Id*. at 3-5.

Petitioners make four arguments with respect to U.S. importers' knowledge during the period after the termination of the suspension agreement and prior to the Department's preliminary determination[2] of sales at LTFV: 1) the importers had a broad knowledge of import prices from a variety of sources around the world; 2) importers were on notice (through newspaper articles and the antidumping duty petition) that prices of imported PRC honey were considered to be dumped by the domestic industry; 3) that the Department's notice of initiation of the antidumping duty investigation provided confirmation of credible allegations of dumping; and, 4) that actual (the ITC preliminary report) and imputed (AUV data) demonstrated

[2] *Notice of Preliminary Determination of Sales at Less Than Fair Value: Honey From the People's Republic of China*, 66 FR 24101 (May 11, 2001) ("*Preliminary Determination*").

knowledge of underselling by imports of PRC honey. *See* Petitioners' Rejection Request Letter at 6.

In support of this contention, petitioners present a variety of evidence. With respect to the question of knowledge of worldwide pricing of honey, petitioners submitted news articles, price lists, and testimony from Importers before the ITC. *See* Petitioners' Second Factual Submission at 5 – 7 and 12 - 13, Attachment C, Attachment D, and Attachment E; *see also* petitioners' January 25, 2012, submission at Attachment E; *see also* Petitioners' Third Factual Submission at Attachment E.

With respect to the argument that importers were on notice that the U.S. honey industry considered imports of PRC honey to be at LTFV, petitioners point again to testimony before the ITC, as well as various newspaper articles. *See* Petitioners' Second Factual Submission at 7-11 and 13-15, and Attachment B; *see also* Petitioners' Third Factual Submission at Attachment E, page 603. Finally, concerning knowledge of underselling by imports of PRC honey, petitioners aver that the ITC preliminary report, as well as information from their May 25, 2010, submission, provides evidence that importers were indeed aware that imports of PRC honey were underselling U.S. honey sales. *See* Petitioners' Second Factual Submission at 2-5, Attachment A; *see also* Petitioners' May 24, 2010, submission at Exhibit 2, Exhibit 4, and Exhibit 5.

In Respondents' Factual Submission, respondents provided a letter from Mr. Nicholas Sargeantson, the president of Sunland International, a U.S. importer of honey. Mr. Sargeantson testified before the ITC, and his comments are cited by petitioners in their factual submissions. *See, e.g.*, Petitioners' Second Factual Submission at 6-7. In Respondents' Factual Submission,

Mr. Sargeantson states that he was unaware at the time of his testimony to the ITC that imports of honey from the PRC were being sold at LTFV. *See* Respondents' Factual Submission, attachment at page 1.[3]

In Respondents' Rebuttal Brief, respondents first state their belief that the Department's analysis in this redetermination is directed by two court decisions. The first, according to respondents, is a decision by the United States Court of Appeals for the Federal Circuit ("CAFC") in *Zhejiang Native Produce & Animal By-products Import & Export Corp., et al., vs. United States*, 432 F.3d 1363 (Fed. Cir. 2005) ("*Zhejiang IIIA*") remanded to the Department in *Zhejiang Native Produce & Animal By-products Import & Export Corp., et al., vs. United States*, 30 C.I.T. 725 (Ct. Int'l Trade 2006) ("*Zhejiang IIIB*").[4] The second is, collectively, *Zhejiang IV* and *Zhejiang V*. *See* Respondents' Rebuttal Brief at 2. Respondents aver that *Zhejiang IIIA* held that the CIT previously erred in finding that the suspension agreement was not designed to eliminate dumping, and that prices in compliance with the suspension agreement were required to be at such a level as to eliminate sales at LTFV. Thus, importers of honey from the PRC who were purchasing honey at prices that conformed to the suspension agreement could not be expected to know that such prices were at LTFV. *Id*. Respondents further state that *Zhejiang V* held that the Department could not input knowledge of dumping by importers based on the initiation of an antidumping duty investigation, and that the Department could not rely on prices after the suspension agreement to input knowledge of dumping if such prices were generally the

[3] The Department is restricting its analysis to information that was available at the time of the original determination, in accordance with section 733(e)(1) of the Act. Since this affidavit was not available to the Department at the time of the investigation, the Department will not be considering it in its analysis.

[4] Respondents reference this decision as "*Zhejiang II*." *See* Respondents' Rebuttal Brief at 2. The Department's

same as those at the end of the suspension agreement. *Id*. at 2-3. Therefore, respondents argue that substantial evidence supports a conclusion that importers could not have known that PRC honey prices were at LTFV after the termination of the suspension agreement, since the prices paid by importers for PRC honey after the suspension agreement were broadly the same, or slightly higher, than prices paid in the last six months of the suspension agreement. *Id*. at 3.

Respondents state that petitioners have suggested that the Department rely on the analytical framework found in *Potassium Permanganate*. Respondents argue that the fact pattern in *Potassium Permanganate* is distinguishable from the fact pattern in this case. First, respondents state that, at the time when the Department made an affirmative critical circumstances determination in *Potassium Permanganate*, the Department calculated NV based on third country prices. *Id*. Next, respondents note in detail the analysis that the Department used in making its affirmative critical circumstances determination in *Potassium Permanganate* and quoted the Department's conclusion in that analysis that "the unique circumstances found in this industry are such that we can impute knowledge of sales at less than fair value to the importers even though they could not anticipate the exact basis for our fair value determination." *Id*. at 4. In citing to the CAFC's affirming opinion in *ICC Industries II*, respondents note that the Court found that importers were aware of prices for potassium permanganate in the PRC, Europe, and the United States. Additionally, respondents state that the Court affirmed the Departments finding "since the importers knew that the unit prices of Chinese subject merchandise was 22 percent less than that imported from Spain, and since in the *Preliminary Determination* importers had argued that the dumping margin should be based on a comparison

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reference is consistent with the reference in the 2010 Remand Redetermination at 1.

of Chinese and Spanish prices, the Court agreed with the Department that importers should have known" that potassium permanganate from the PRC was being dumped. *Id*. at 5. Respondents thus conclude that *ICC Industries II* requires that the Department establish "that importers have actual knowledge that they were buying merchandise at dumped prices" in order to reach an affirmative critical circumstances determination. *Id*.

Respondents contend that the evidence on the record of this proceeding does not support an affirmative critical circumstances determination using the methodology in *Potassium Permanganate*. In support of this position, respondents state the following. First, respondents again note that the prices paid for imports of PRC honey into the United States after the termination of the suspension agreement were broadly the same as prices during the last six months of the suspension agreement. Additionally, respondents point to the affidavit in Respondents' Factual Submission as proof that importers believed that the prices that they were paying for PRC honey in the time period after the termination of the suspension agreement were not at LTFV. *Id*. Respondents argue that petitioners, in order to rebut these facts, would have to provide evidence that U.S. importers would have known how the Department intended to calculate NV during the investigation, and note that there is no such evidence on the record. *Id*. Respondents state that the calculation of NV in a Non-Market Economy ("NME") investigation is "unpredictable," and provide criticisms of the Department's methodology used to calculate NV in the PRC honey antidumping duty investigation. *Id*. at 5-9.

Respondents also examine the evidence placed on the record by petitioners and contend that the evidence does not support an affirmative critical circumstances finding. With respect to the fact that PRC honey prices undersold U.S. honey prices, respondents state that "the fact that

Chinese prices arguably were lower than U.S. prices and that Chinese prices were injurious to the U.S. industry has absolutely no relationship as to whether Chinese honey is being sold at LTFV prices, let alone whether U.S. importers of Chinese honey knew or should have known they were buying dumped merchandise." *Id*. at 9. Respondents also note that the Department does not normally impute knowledge of dumping in its critical circumstances analysis when margins are less than 25 percent, and note that the findings at the ITC were of PRC honey prices between 9 percent and 19.8 percent lower than U.S. honey prices. *Id*.

With respect to the testimony at the ITC that petitioners placed on the record, respondents state again that prices paid by importers of PRC honey after the suspension agreement were broadly the same as those prices that existed during the suspension agreement. Respondents also point to the affidavit in Respondents' Factual Submission as evidence that importers were not aware that prices for PRC honey were at LTFV. *Id*. at 10-11. Concerning the newspapers articles placed on the record by petitioners, respondents state that they do not support an affirmative critical circumstances finding because "they do not contain any information regarding LTFV pricing" during the period after the termination of the suspension agreement. *Id*. at 11. With respect to information on comparative prices, respondents note that petitioners' submissions of May 25, 2010, and January 19, 2012, contain pricing information indicating that the prices for PRC honey were generally the same during the investigation as they were during the suspension agreement, and that prices for PRC honey also were generally the same as prices for Argentine and U.S. honey during the same period. Thus, respondents aver that the evidence does not support and affirmative critical circumstances determination. *Id*. at 11-12. Finally, respondents state that petitioners' arguments with respect to the surge in imports after the

initiation of the investigation are "speculative" and do not mean that importers knew, or should have known, that purchases of PRC honey were at LTFV. *Id*. at 12.

ANALYSIS

As a threshold matter, the Department has determined to accept all of the information provided by parties in this most recent remand redetermination. The Court stated that the Department "may, in its discretion, reopen the record." *Id*. at 24. We have determined that it is reasonable to re-open the record and accept all of the information provided by parties for consideration.

The Department normally makes a critical circumstances finding if there is a history of dumping in the United States of the merchandise under consideration, or importers knew or should have known that merchandise was being dumped, and there have been massive imports of merchandise over a relatively short time period subsequent to the initiation of an investigation.[5] In determining whether there is a reasonable basis to believe or suspect that an importer knew or

[5] Section 735(a)(3) of the Act states, with respect to critical circumstances, that the Department will determine whether there is a reasonable basis to believe or suspect that:

> (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or
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> (ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and
>
> (B) there have been massive imports of the subject merchandise over a relatively short period.

The Department found evidence of massive imports of subject merchandise by Zhejiang, Kunshan, High Hope, and the PRC-Wide entity within a relatively short period. *See Notice of Final Determination of Sales at Less Than Fair Value; Honey from the People's Republic of China*, 66 FR 50608 (Oct. 4, 2001) ("*Final Determination*"), and accompanying Issues and Decision Memorandum at Comment 2.

should have known that the exporter was selling subject merchandise at LTFV, the Department normally compares the normal value calculated during the investigation to the U.S. price, and considers margins of 25 percent or more for export price sales during the period of investigation sufficient to impute knowledge of dumping ("the 25 percent methodology"), pursuant to section 733(e)(1)(A)(ii) of the Tariff Act of 1930, as amended ("the Act").[6] However, the Court has made clear that any prices that were consistent with the suspension agreement prices cannot, alone, serve as substantial evidence that the relevant party knew or should have know that the sales were at LTFV. *See Zhejiang V* at *22-23. The Department has not identified any sales of subject merchandise on the record that are inconsistent with the suspension agreement prices. Accordingly, and consistent with the Court's opinion, the Department has examined the record to determine if there is any other evidence demonstrating that the importers knew or should have known that the exporter was selling subject merchandise at LTFV.

In *Zhejiang V*, the Court held that the Department's "application of the 25% methodology to the 190-day period beginning at the initiation of the LTFV investigation through the Department's Preliminary Results is clearly authorized by *Zhejiang IV*." *See Zhejiang V* at 19. However, the Court held that the Department's critical circumstances determination "lacks the support of substantial evidence because (1) the initiation of the antidumping investigation cannot be said to have put plaintiff on notice that the prices set by the Suspension Agreement were dumped prices, and (2) the prices importers paid did not materially change from the period when

[6] The Department has adopted the 25 percent methodology as a general practice for determining whether critical circumstances exist. *See Preliminary Determination*, unchanged in the *Notice of Final Determination of Sales at Less Than Fair Value; Honey from the People's Republic of China*. *See* also *Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From The People's Republic of China*, 62 FR 31972, 31978 (June 11, 1997), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-*

the Suspension Agreement was in effect." *Id.* at 19-20. The Court noted, however, that the Department had "other evidentiary tools that it might have used to produce the substantial evidence needed to make its case." *Id*. at 23.

As stated earlier the Court highlighted the methodology used by the Department in its critical circumstances determination in the investigation of potassium permanganate from the PRC. Citing *Potassium Permanganate*, the Court noted that in prior critical circumstances determinations, the Department had based its affirmative critical circumstances determination on the agency's finding that "importers were actually aware of the pricing of the merchandise for non-Chinese sources, and were, therefore, 'aware of the entire range of pricing in a marketplace where pricing was a major factor in determining sales.'" *See Zhejiang V* at *23 (emphasis added). Similarly, citing *Nippon*, the Court noted that the Department's critical circumstances determination had been supported by "numerous press reports" and "falling domestic prices resulting from rising imports." *Id.* (citing *Nippon* 24 CIT at 1168). The Court held that, in contrast to these prior cases, in this case the Department "has made no effort to demonstrate that the importers had actual knowledge of honey prices that was important in *Potassium Permanganate* and *Nippon*. Rather than demonstrating actual knowledge of LTFV pricing by the importers, the Department has chosen to impute knowledge . . ." *Zhejiang V* at *23-24 (emphasis added). The CIT remanded the case to the Department, instructing that the Department "may use any analysis permitted by *Zhejiang IV* to complete its critical circumstances review, provided that it not use evidence prohibited by this opinion." *Id*. at *24.

In *ICC Industries II*, the CAFC affirmed the Department's finding that importers knew or

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Length Carbon Steel Plate From the People's Republic of China, 62 FR 61964.

should have known that subject merchandise was being imported at LTFV on the basis of six factual findings: 1) Spain and the PRC were the primary sources, other than the United States, of potassium permanganate; 2) Spain is not a state-controlled economy; 3) During the period March-July 1983, the unit price of potassium permanganate was 22 percent less than that imported from Spain and nearly 40 percent less than the price of the domestic product; 4) While potassium permanganate from Spain was of a different quality and grade than from the PRC, it was found to be priced similarly in 1981-1982 and the two grades were interchangeable; 5) Most of the imports comprising the surge which led to the Department's affirmative critical circumstances determination were the result of orders placed after the initiation of the antidumping duty investigation; and 6) Importers were on notice of the pendency of the investigation.[7]

As an initial matter, the Department does not believe that the application of the critical circumstances methodology used in *Potassium Permanganate* is appropriate. The Department no longer considers the analysis used in *Potassium Permanganate* an appropriate framework for determining critical circumstances because export prices from a broad range of third countries may not be representative of normal value for a PRC product. In the nearly 30 years since the agency issued its determination in *Potassium Permanganate*, the statute and the Department's NME methodology have changed significantly. Specifically, the Department calculates normal value for NME countries such as the PRC "on the basis of the value of the factors of production utilized in producing the merchandise," pursuant to section 773(c)(1) of the Act. Moreover, in

[7] "In the instant case, we note that honey is a fungible product and that importers were on notice of the pendency of the investigation."

valuing these factors of production, section 773(c)(4) of the Act requires that the Department "shall utilize, to the extent possible, the 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" (emphasis added). The Department then uses this calculated normal value in its critical circumstances analysis, comparing it to the U.S. price for subject merchandise, and finding that antidumping duty margins over 25 percent support a finding of critical circumstances. In other words, the Department now determines the existence of dumping, and of critical circumstances, by comparing a product's U.S. prices to normal value calculated using factors of production from an economically comparable country, and not by comparing U.S. prices to the prices of that product from other countries exporting the product, regardless of economic comparability.[8]

The rationale behind the use of Department's methodology (and the methodology used in *Zhejiang IV*) is that the Department is comparing actual sales prices of subject merchandise under investigation against a calculated NV that reasonably reflects (through the Department's surrogate value methodology) the value of the merchandise under investigation. A difference of 25 percent between those sales prices and the calculated NV is sufficiently large to indicate that importers "should have known" that the merchandise which they were importing was being sold at LTFV. Comparing sales prices to NV provides an "apples-to-apples" comparison. In contrast, a comparison of U.S. sales prices of subject merchandise from the country under investigation to

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[8] By contrast, in the *Potassium Permanganate* investigation, though normal value was calculated using a factors of production methodology (using Thailand as a surrogate country), the Department based its critical circumstances determination, in part, on a comparison of the price of subject merchandise from the PRC to the price of potassium permanganate imported from Spain. *See Potassium Permanganate*.

sales prices of the same merchandise sold into the United States from other countries, in most cases, cannot be a reliable indicator of whether or not sales of subject merchandise under investigation are being sold at LTFV. Respondents argue that "the fact that Chinese prices arguably were lower than U.S. prices and that Chinese prices were injurious to the U.S. industry has absolutely no relationship as to whether Chinese honey is being sold at LTFV. *See* Respondents' Rebuttal Brief at 9. Indeed, the merchandise under investigation may have a lower normal value, as calculated using surrogate value methodology, and thus might be sold at a lower price than, say, merchandise produced in the United States or a third country. There may be any number of reasons why the prices of imports of a particular product from different countries may vary. For the same reasons, the Department does not agree with respondents' arguments that "the fact that Chinese honey was being sold at competitive prices to honey from Argentina and the United States supports a conclusion that U.S. importers did not know, and had no reason to know, they were buying honey at dumped prices." *Id*. at 12. Simply put, the comparison of prices of imported honey from the PRC to prices of honey from the United States or from other countries generally cannot, alone, demonstrate that the same PRC honey prices are or are not at LTFV. While the Department compared prices of Chinese and Spanish potassium permanganate for the purposes of determining critical circumstances in its 1983 investigation[9] and its methodology was affirmed by the courts,[10] for the reasons discussed above, the agency no longer considers it appropriate to conduct a similar comparison of the prices of Chinese honey to the

[9] *See Potassium Permanganate*.

[10] *See ICC Industries I* and *ICC Industries II.*

prices of honey imported from other world sources.[11]

Nevertheless, in response to the remand order from the Court, the Department has examined the record evidence in light of the *Potassium Permanganate* and *Nippon* methodology framework outlined above. Our findings are described below. As discussed below, the *Potassium Permanganate* investigation involved an industry with much smaller numbers of producers and producing countries, presenting a unique set of factual circumstances that we do not believe exist in this case.

The Department, in *Potassium Permanganate,* based its affirmative critical circumstances determination to a large degree on its finding that U.S. importers were aware of pricing of the subject merchandise from a narrow range of sources throughout the world, and that, therefore, they knew or should have known that potassium permanganate was being sold at LTFV. *See Potassium Permanganate* at 57347. Specifically, the Department found in that case that, other than Spain and the United States, there were "no other known market economy producers of potassium permanganate which export this product to world markets." *Id.* Moreover, the agency found that the number of companies that produced and marketed potassium permanganate was limited to a single company in the United States (Carus Chemicals), a single company in Spain (Asturquimica), and several companies in the PRC. *Id*.

[11] We note that during the time period under examination for the purposes of this critical circumstances determination, there were no imports of honey to the United States from any of the countries that the Department had designated as economically comparable to the PRC at that time. As respondents have noted, the Department had identified India, Pakistan, Indonesia, Sri Lanka, and the Philippines, as being at a level of economic comparability to the PRC. *See* Respondents' Rebuttal Brief at 8; *see also* Memorandum to Richard Weible from Jeffrey May, dated January 9, 2001 ("Surrogate Country Selection Memorandum"). There is no record evidence to show that there were any imports of honey from any of these countries during the time period under examination. *See* Petitioners' Second Factual Submission at Attachment C. We note, however, that petitioners' May 25, 2010, submission at Exhibit 5 does not provide a source for the data submitted and does not list the countries that constitute the "other" classification in the exhibit.

Consequently, the Department found it could "reasonably assume that the potassium permanganate industry is a closely knit industry acutely aware of pricing from all sources, since sources are very limited." *Id.* (emphasis added). In other words, in that case the Department found that it was reasonable to rely on an assumption that U.S. importers' were aware of prices from Spain, because the subject merchandise was produced and marketed by a limited number of companies from within a similarly limited number of countries.

By contrast, in the instance case, record evidence shows that honey was imported into the United States during the period between the termination of the suspension agreement and the *Preliminary Determination* from six countries (Argentina, Canada, Chile, Mexico, PRC, Uruguay, and Vietnam). *See* Petitioners' Second Factual Submission at Attachment C.[12] Additionally, evidence on the record indicates that there may be other sources of honey imports into the United States.[13] In the PRC honey antidumping investigation, the Department calculated margins for seven producers/exporters and a PRC-wide rate. *See Preliminary Determination* at 24108. In the preliminary results for the antidumping duty investigation on honey from

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[12] Attachment C consists of price reports from the United States Department of Agriculture ("USDA") contained in the National Honey Report for the months of November 2000, December 2000, January 2001, February 2001, March 2001, April 2001, and May 2001. These reports total 15 pages of Attachment C, denoted by a number in the upper-right-hand corner of the pages. *See* Attachment C at pages 3 (November 2000 report, showing imports from Argentina and China), 5 (December 2000 report, showing imports from Canada, Argentina, and China), 7 (January 2001, showing imports from Canada, Argentina, and China), 9 (February 2001, showing imports from Canada, Argentina and China), 11 (March 2001, showing imports from Canada, Argentina, China, Mexico, and Uruguay), 13 (April 2001, showing imports from Argentina, China, Uruguay, and Vietnam), and 15 (May 2001, showing imports from Canada, Argentina, China, Chile, Vietnam, and Uruguay).

[13] *See* Petitioners' First Factual Submission, Exhibit 1 at Transcript page 112 (testimony from Mr. Sargeantson stating that past sources of imports have been from "Vietnam, India and other non-traditional sources"); *see also* Petitioners' Third Factual Submission at Attachment E (various American Bee Journal volumes discuss beekeeping and honey markets for Australia and New Zealand). Moreover, the United States honey industry alone consists of thousands of beekeepers, some 350 beekeeper/packers and 110 independent packers. *See* Petitioners' First Factual Submission, Exhibit 2 at page 13.

Argentina, the Department calculated rates for three producers/exporters. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Honey From Argentina*, 66 FR 24108 at 24113 (May 11, 2001). Thus, for U.S. honey importers to be "acutely aware of prices from all sources," they would have to be knowledgeable of pricing trends of honey from numerous producers and exporters from at least nine different countries.

Indeed, petitioners contend that U.S. honey importers "had 1) broad knowledge of market pricing for honey from domestic producers, Chinese exporters and third country exporters, and 2) reason to know that imports of honey during the 190 day period following the initiation were dumped." *See* Petitioners' Draft Comments at 8. As noted above, in support of their argument, petitioners have stated that: 1) the importers had a broad knowledge of import prices from a variety of sources around the world; 2) importers were on notice (through newspaper articles and the antidumping duty petition) that prices of imported PRC honey were considered to be dumped by the domestic industry; 3) the Department's notice of initiation of the antidumping duty investigation provided confirmation of credible allegations of dumping, and; 4) importers had actual (the ITC preliminary report) and imputed (AUV data) demonstrated knowledge of underselling by imports of PRC honey. *See* Petitioners' Rejection Request Letter at 6. In particular, petitioners argue that U.S. importers' testimony before the ITC demonstrates that importers had a "detailed level of market knowledge of import pricing." *See* Petitioners' Second Factual Submission at 6. Petitioners note that during the underlying investigation, the then President of importer Sunland International (Mr. Sargeantson) testified that he imported honey from the PRC, Argentina, and other countries and that he was "very familiar with U.S. and world honey markets." *Id.* at 6-7 (citing to testimony by Nick Sargeantson at Petitioners' January 6,

2012 Submission, Exhibit 1, Transcript page 108). Petitioners also cite as evidence testimony by importer Dwight Stoller of W. Stoller Honey Company, arguing that it demonstrates that he had knowledge of market pricing for honey from Argentina, China, the United States and other sources, and that he "purchased and imported honey from a variety of sources based on price." *Id.* at 5 (citing to testimony by Dwight Stoller at Petitioners' January 6, 2012 Submission, Exhibit 1, Transcript page 100-108, 129).

However, in addition to some knowledge of honey prices in the United States and abroad, the testimony provided by petitioners indicates that U.S. honey importers were also aware that prices of honey from the PRC had not dropped after the suspension agreement had lapsed:

> There is also no threat because Chinese and Argentine prices are not declining. Petitioners portray a world of falling prices. That is not the case anymore. Chinese prices have not fallen since the suspension agreement terminated, nor have their exports increased.[14]

Moreover, Mr. Sargeantson's testimony demonstrates that U.S. importers also knew that prices had risen and were unlikely to fall due to the Chinese government's quota licensing system:

> The Chinese government did not remove that quota licensing system when the suspension agreement was so abruptly terminated, and it is not in their interest to do so any time in the foreseeable future. This system insulates the U.S. industry from any threat. Indeed, Chinese prices have risen in the week since the termination of the suspension agreement.[15]

In summary, while U.S. importers were aware, to some degree, of world market prices of honey, the evidence does not conclusively demonstrate that they were aware of the full range of

[14] *Id.* at Exhibit 1, Transcript page 119 (emphasis added).

[15] *Id.* at Exhibit 1, Transcript page 118 (emphasis added).

prices, as they were in *Potassium Permanganate*, because of the more numerous countries from which honey was, or could have been, exported to the United States. Furthermore, the record also demonstrates importers were aware that Chinese prices had remained the same as or risen above the prices established under the suspension agreement. Consequently, the Department finds that, contrary to Petitioner's assertions, the U.S. importers testimony before the ITC fails to demonstrate that they "knew or should have known" that honey from the PRC was being sold at less than fair value, in accordance with to section 733(e)(1) of the Act.

In this regard, we note that the CAFC has held that "it strains credibility to suggest that Commerce could establish minimum prices for honey designed to 'prevent the suppression or undercutting of price levels of the United States honey products' and then determine that U.S. importers purchasing honey in accordance with these pricing guidelines should have known these sales would be found to be at less than fair value." *See Zhejiang IIIA*. This Court in its most recent remand order took note of this ruling and held "that a critical circumstances determination based solely on prices that are 'broadly the same' as those established under the Suspension Agreement, even if taken from the period following the Suspension Agreement's termination, cannot be supported by substantial evidence either." *See Zhejiang V*. Moreover, this Court also held that, rather than imputing knowledge of dumping, the agency must base its determination on "actual knowledge of less than fair value pricing by the importers." *Id.* at 24 (emphasis added). Here, the evidence does not demonstrate that U.S. importers had actual knowledge that honey from the PRC was priced at LTFV. To the contrary, the record demonstrates that U.S. importers stated that the Chinese government's quota licensing system kept prices at the same or higher levels than those at the time of the Suspension Agreement. *See* Petitioners' First Factual

Submission at Exhibit 1, Transcript page 118 (emphasis added). Unlike the facts of *Potassium Permanganate*, the evidence in this case does not support a finding that U.S. importers knew or should have known that honey from the PRC was being sold at LTFV, pursuant to section 733(e)(1) of the Act. Accordingly, the Department finds that critical circumstances do not exist in this proceeding.

Petitioners argue that the margins calculated by the ITC demonstrate a linkage between underselling of U.S. honey by PRC honey imports, the volume of subject imports, and declining U.S. honey prices. *See* Petitioners' First Factual Submission at 6. Petitioners further state that the ITC determined that the prices and volumes of PRC honey imports had a significant negative impact on the U.S. honey industry and was a reasonable indication of material injury by reason of subject imports. *See* Petitioners' Second Factual Submission at 3. However, the Department notes that it does not rely on ITC margins for its critical circumstances determinations and U.S. importers are aware that ITC margins do not form the basis of a finding that subject merchandise is being sold at LTFV. Moreover, these margins are lower than both the 25 percent threshold used by the Department in its critical circumstances analyses, and also lower than the 22 percent margins that formed the basis of the agency's affirmative determination in *Potassium Permanganate*. Therefore, the Department finds that the margins calculated by the ITC are not probative of whether U.S. importers knew or should have known that honey was being sold for LTFV.

Petitioners further argue that the surge in imports of honey from the PRC after the initiation of the investigation is evidence that importers knew, or should have known, that imports of honey from the PRC were likely to have been dumped. *See* Petitioners' Second

Factual Submission at 17. Section 733(e)(1) of the Act instructs the Department to find critical circumstances where A) importers knew or should have known that imports of subject merchandise were being sold at LTFV, and B) there have been massive imports over a short period of time (also referred to as a "surge" of imports). In other words, the statute requires that the Department must base its affirmative critical circumstances determination on two separate findings---one with regard to importers' knowledge of LTFV pricing and the other with regard to a surge of imports.[16] In this instance, the Department found during the investigation that there was a massive increase in imports over a relatively short period of time, pursuant to section 733(e)(1)(B). However, the Department does not agree with petitioners' contention that this finding also demonstrates that importers knew, or should have known, that PRC honey imports were being sold at LTFV.

With respect to the newspaper articles submitted by petitioners, the Department notes that there are two types of articles. The first type includes articles published in non-industry newspapers, while the second are industry publications. With respect to the non-industry newspaper articles, petitioners originally placed three such articles on the record. *See* Petitioners' May 25, 2010, Submission at 18-19 and Exhibit 3.[17] Petitioners later placed five more such articles on the record. *See* Petitioners' Second Factual Submission at 9-11 and

[16] *See Preliminary Determination* at 24108, unchanged in the *Final Determination*.

[17] Petitioners submitted the following articles in Exhibit 3. The first article is by Joe Kafka, Associated Press Writer, from August 3, 2000, datelined Pierre, S.D. ("Pierre"). The second article is by Steve Foss, *Hives Thrive While Prices Take a Dive; Low Prices Make Area Producers Thankful for Good Years in the Field*, Grand Forks (N.D.) Herald, August 14, 2000, ("Grand Forks II"). Finally, the last article is by Laura Haferd, *Foreign Honey Sticky Issue Area Beekeepers not Happy about Influx*, Akron Beacon Journal, September 17, 2000 ("Akron Beacon").

Exhibits B-1 through B-5.[18] Of the total of eight non-industry newspaper articles placed on the record, five of these were published while the suspension agreement was still in effect.[19] Therefore, the Department believes that these articles could not have alerted honey importers that the honey they were importing from the PRC was being sold for LTFV. The remaining non-industry articles, published after the conclusion of the suspension agreement, speak to the general difficulties facing U.S. honey producers due to low-priced imports. *See, e.g.*, Petitioners' Second Factual Submission at Attachment B-3.[20]

The second type of article is from trade publications such as the American Bee Journal. Petitioners have placed on the record a number of volumes of this publication. *See* Petitioners' Second Factual Submission at Attachment E.[21] *See also* Petitioners' Third Factual Submission at Attachment E.[22] These articles contain information regarding honey industry trends, as well as pricing from both U.S. and foreign sources. *See, e.g.*, Petitioners' Second Factual Submission at

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[18] Petitioners submitted the following articles in Exhibits B-1 through B-5. The first article (at Exhibit B-1) is by Greg Griffin, Denver Post Business Writer, *Beekeepers Stung by Low Prices. Citing Cheap Imports, Honey Producers Plan Anti-Dumping Petition*, The Denver Post, June 23, 2000, ("Denver Post"). The second article (at Exhibit B-2) is by Steve Foss, *No Honey of a Business; Low Prices Make Area Producers Thankful for Good Years in the Field*, Grand Forks (N.D.) Herald, August 9, 2000, (Grand Forks I). The third article (at Exhibit B-3) is listed as being by 'The Associated Press State & Local Wire," datelined Fordville, N.D., *Farm Scene: Honey Crop is Sweet, but not the Prices*, August 10, 2000 ("Fordville"). The fourth article (at Exhibit B-4) is by Karen Ogden Ivanova, *Feeling Sting of Imports*, The Great Falls Tribune (Great Falls, MT), August 13, 2000 ("Great Falls I"). The last article (at Exhibit B-5) is by Karen Ivanova, Great Falls Tribune, *Beekeeper Returns Home to Take Over Grandfather's Business*, The Great Falls Tribune (Great Falls, MT), August 30, 2000 (Great Falls II").

[19] *See* Pierre, Grand Forks II, Denver Post, Grand Forks I, and Fordville articles.

[20] *See, e.g.*, Fordville article: "Honey producers say cheap honey from Argentina and China is causing financial disaster for their industry," at Transcript page 20.

[21] American Bee Journal; Volume 140, No. 7 (July 2000), Volume 140 No. 9 (September 2000), Volume 140 No. 10 (October 2000), Volume 140 No. 11 (November 2000), Volume 140 No. 12 (December 2000), Volume 141 No. 1 (January 2001), Volume 141 No. 2 (February 2001), Volume 141 No. 3 (March 2001), Volume 141 No. 4 (April 2001), Volume 141 No. 5 (May 2001), and Volume 141 No. 6 (June 2001).

[22] American Bee Journal; Volume 140, No. 6 (June 2000), Volume 140 No. 8 (August 2000),

Attachment E (American Bee Journal, Volume 140 No. 7, publication pages 529–531); Attachment E (American Bee Journal, Volume 141 No. 4 publication pages 240-244). The Department determines that all of the newspaper articles, including those in both industry and non-industry publications, indicate that importers knew the general conditions in the U.S. honey market, and were aware that low-priced honey was being imported from other countries. However, the Department does not agree with petitioners' contention that knowledge of low-priced imports generally, or of the specific prices of these imports, necessarily indicates the U.S. importers knew or should have known that honey from the PRC was being sold at LTFV. While these prices may indicate an awareness of the pricing levels of PRC and Argentine honey imports, as discussed previously, the Department determines a dumping margin by calculating the difference between a producer's normal value and U.S. price, and not by calculating the difference in price between PRC goods and third country goods sold in the United States. *See* 19 U.S.C. § 1677b(a).[23]

We do not agree with petitioners' argument that an impending antidumping case was sufficient evidence to indicate that importers knew that dumping was occurring. *See* Petitioners' Draft Comments at 13. Indeed, this Court has stated that "the initiation of the antidumping investigation cannot be said to have put plaintiff on notice that the prices set by the Suspension Agreement were dumped prices." We agree with petitioners that "it is never possible for an importer to have certain knowledge of dumping because they do not have access either to the foreign producers' home market sales prices or costs, or in the case of China, to the factors of

[23] The Department is not relying on prices contained in the American Bee Journal to determine differences in prices between United States and foreign sources of honey. Rather, the Department is relying on these publications to

production and surrogate value information that would be used to calculate a dumping margin. This has never been a bar to the finding of knowledge of dumping under any of the critical circumstances test that the Department has employed, however." *Id*. at 15-16. Nevertheless, the Court in *Zhejiang V* specifically stated that the Department had not attempted to demonstrate actual knowledge of LTFV pricing by importers, and that imputing such knowledge based on prices was insufficient because prices for honey remained the same as or increased from the levels set by the Suspension Agreement. *See Zhejiang V* at 24. While U.S. importers may have been aware that prices of honey imported from China (or Argentina) were low, as explained above, here the evidence does not demonstrate that importers had actual knowledge that honey from the PRC was dumped, or sold at less than fair value. To the contrary, the record demonstrates that U.S. importers stated that Chinese government's quota licensing system kept prices at the same or higher levels than those at the time of the Suspension Agreement. Accordingly, the Department finds that critical circumstances do not exist in this proceeding.

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demonstrate the number of countries from which honey might be imported.

CONCLUSION

Based on an analysis of the infotmation on the record, the Department finds that critical circumstances do not exist with respect to exports of honey from the PRC by Zhejiang, Kunshan, High Hope, and PRC-wide entity. The Department's analysis indicates that there is no evidence on the record to indicate that importers were aware of prices for honey from all sources, or that they knew or should have known that PRC honey was being sold for LTFV within the meaning of section 733(e)(1)(A)(ii) of the Act.

Paul Piquado
Assistant Secretary
for Import Administration

22 March 2012
Date