

A-570-863
Remand
AD Determination
EG III/8: alm

**ZHEJIANG NATIVE PRODUCE & ANIMAL BY-PRODUCTS IMPORT & EXPORT
CORP., ET AL. v. UNITED STATES**

Consol. Court No. 02-00057
Slip Op. 03-151 (November 21, 2003)

**FINAL RESULTS OF REDETERMINATION
PURSUANT TO REMAND**

SUMMARY

The Department of Commerce (the Department) has prepared these final results pursuant to the remand order from the United States Court of International Trade (CIT) in Zhejiang Native Produce & Animal By-products Import & Export Corp., et al. v. United States, Slip Op. 03-151 (CIT November 21, 2003) (Zhejiang).

For reasons explained below, we have not changed our valuation of the raw honey input used to manufacture processed honey for this proceeding.

BACKGROUND

Prior to this proceeding, the Department and the Government of the PRC signed an agreement suspending the 1995 antidumping duty investigation of honey from the PRC. See Honey from the People's Republic of China; Suspension of Investigation, 60 FR 42521 (August 16, 1995) (Suspension Agreement). Pursuant to the Suspension Agreement, the Department suspended the investigation effective August 16, 1995 and terminated the suspension of

liquidation ordered in the preliminary determination. Id. at 42522.

On July 28, 2000, based upon the fact that “no domestic interested party” elected to participate in the sunset review proceedings, the Department terminated the suspended antidumping investigation of honey from the PRC. See Notice of Final Results of Five-Year Review, Termination of Suspended Antidumping Investigation on Honey from the People’s Republic of China, 65 FR 46426 (July 28, 2000).

On October 26, 2000, in response to a petition filed by two domestic honey producers, American Honey Producers Association and Sioux Honey Association (collectively, petitioners), the Department initiated antidumping duty investigations to determine whether imports of honey from the People’s Republic of China (PRC), as well as Argentina, were being, or were likely to be, sold in the United States at less-than-fair-value. Notice of Initiation of Antidumping Duty Investigations: Honey From Argentina and the People's Republic of China, 65 FR 65831-65834 (November 2, 2000).¹ Subsequently, the Department issued questionnaires and received responses from several PRC manufacturers/exporters of the product under investigation.

On November 17, 2000, the U.S. International Trade Commission (the ITC) published its preliminary determination that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise from Argentina and the PRC (see 65 FR 69573).

On May 11, 2001, the Department published its preliminary determination of sales at less-than-fair-value. Notice of Preliminary Determination of Sales at Less Than Fair Value:

¹ The Department also conducted concurrent antidumping and countervailing duty investigations of sales of honey from Argentina to the United States.

Honey from the People's Republic of China, 66 FR 24101 (May 11, 2001) (Preliminary Determination). On July 25, 2001, the Department issued an amended preliminary determination. Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Honey from the People's Republic of China, 66 FR 40191 (August 2, 2001).

On October 4, 2001, the Department published its final determination that honey from the PRC was being sold at less-than-fair-value in the United States. Notice of Final Determination of Sales at Less Than Fair Value; Honey from the PRC, 66 FR 50608 (October 4, 2001) (Final Determination), and accompanying Issues and Decision Memorandum (Decision Memo). Pursuant to 19 U.S.C. § 1673(d), we made our final determination on October 4, 2001. In issuing our final determination, we addressed all comments raised by interested parties in our final issues and decision memorandum including the surrogate value for raw honey. See Final Determination, 66 FR 50608 and Decision Memo at 17 - 22, Comment 4.

On November 19, 2001, the ITC notified the Department of its final determination, pursuant to 19 U.S.C. § 1673d, that an industry in the United States was materially injured by reason of less-than-fair-value imports of subject merchandise from the PRC. In addition, the ITC made an affirmative determination that critical circumstances existed with respect to subject imports from the PRC for which the Department had made affirmative critical circumstances determinations. Honey from Argentina and China, Inv. Nos. 701-TA-402 and 731-TA-892-893 (Final), ITC Pub. No., 3470, November 19, 2001.

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

Republic of China, 66 FR 63670 (December 10, 2001).

_____ Several PRC honey manufacturers/exporters and domestic packers brought suit at the CIT, challenging (1) the Department’s calculation of antidumping duty margins on sales made pursuant to the Suspension Agreement, (2) its determination with respect to critical circumstances, and (3) the Department’s methodology for valuing the raw honey input.² On November 21, 2003, the CIT issued its opinion in Zhejiang, remanding one issue to the Department (i.e., the Department’s methodology for valuing raw honey), and affirming the Department on all other issues.

In remanding the decision, the Court directed the Department to address four points. Specifically, the Court instructed the Department to “(1) determine whether the use of the Tribune Article results in the ‘valuation of [raw honey] . . . based on the best available information regarding the value[] of such factor[],’ 19 U.S.C. § 1677b(c)(1); (2) should it find that it is, explain in detail how the use of 35 rupees per kilogram in determining normal value ‘evidences a rational and reasonable relationship to the factor of production it represents,’ *Shandong Huarong*, 159 F. Supp. 2d at 719; (3) no matter whether it continues to use the Tribune Article or other sources, fully and completely justify any sources of data as the ‘best available information’ for the finding such data are used to support; and (4) should any resulting calculation of normal value of honey from the PRC exceed that of the weighted-average of the honey unit import values from all other countries during the POI, explain in detail how this

² Zhejiang Native Produce & Animal By-Products Import & Export Corp., Kunshan Foreign Trade Co., China (Tushu) Super Food Import & Export Corp., High Hope International Group Jiangsu Foodstuffs Import & Export Corp., National Honey Packers & Dealers Association, Alfred L. Wolff, Inc., C.M. Goettsche & Co., China Products North America, Inc., D.F. International (USA) Inc., Evergreen Coyle Group, Inc., Evergreen Produce, Inc., Pure Sweet Honey Farm, Inc., and Sunland International, Inc. (collectively, plaintiffs) filed a Rule 56.2 Motion for judgement upon the agency record on September 17, 2002.

further the goal of estimating antidumping duty margins as accurately as possible. *See Lasko Metal Prods. Inc.*, 43 F.3d at 1446.” Zhejiang at 45.

On February 4, 2004, the Department issued a draft of its redetermination on remand for this investigation to interested parties for review and comment. The Department received comments from petitioners in this investigation on February 10, 2004. The Department’s analysis of these comments is below.

ANALYSIS

As noted by the Court, the raw honey input is an important factor in the normal value calculation of the subject merchandise under the Department’s non-market economy (NME) methodology. Zhejiang at 45. Consideration of this issue pertains to the Department’s overall methodology for selecting and valuing surrogate values in NME cases. In its opinion, the Court did not sustain the methodology used by the Department to calculate per kilogram raw honey values from the country-wide raw honey values appearing in a Tribune of India article. See generally Final Analysis Memo for Zhejiang at Appendix IX, dated September 26, 2001, (Tribune of India article). Although the Court agreed with the Department’s finding that the Tribune of India article was the “more reliable” source for valuing raw honey, the Court nevertheless concluded that the final per kilogram raw honey values derived from this source “are sufficiently incredible so as to call into question their reliability.” Zhejiang at 42 - 43. In remanding this matter, the Court instructed the Department to “revisit its decision” to value raw honey at 35 rupees (Rs.) per kilogram (kg.).

As noted above, prior to this proceeding, imports of honey from the PRC were subject to a suspension agreement. The Suspension Agreement established annual “export limits” and quarterly “reference prices” based upon weighted-average import values from all other countries. Suspension Agreement, 60 FR at 42524. The quarterly “reference prices” were calculated as “92 percent [of] the weighted average of the honey unit import values from all other countries for the most recent six months” for which data is available at the time the reference price is calculated. Id.

In reaching its finding, the Court adjusted Zhejiang’s calculated weighted-average U.S. price upward to reflect what “would have been” the estimated weighted-average price at which honey was sold from all other countries during the period of investigation (POI). The Court then compared this estimated weighted-average price of imports from all other countries (i.e., “reference prices” calculated under the Suspension Agreement)³ to the normal value calculated by the Department for Zhejiang. Zhejiang at 43 and 44. By this comparison, the Court concluded that because the Department’s results yielded a normal value which exceeded the weighted-average honey unit import values from all countries other than the PRC during the POI (i.e., reference prices), the Department’s valuation “appears to be the most anomalous.” Zhejiang at 45. The Court further concluded that “the very *magnitude* of the difference between Commerce’s calculation of normal value and the weighted-average of honey unit import values from all other countries during the POI, calls into question Commerce’s methodology and the

³ Accordingly, the reference prices calculated during the POI (i.e., January - June 2000) were based on weighted average honey unit import values from all countries other than the PRC for each of the following harmonized tariff schedule of the United States (HTSUS) subheadings: 0409.00.0025, 0409.00.0042, 0409.00.044, 0409.00.062, and 0409.00.064 for the six-month period prior to the POI (i.e., July - December 1999).

evidence on which it relied (emphasis added).” Zhejiang at 45.⁴

In light of the Court’s remand, the Department has revisited its decision that the Tribune of India article constitutes the “best available” information on the record, and its methodology using that information “to value raw honey at 35 rupees per kilogram.” Zhejiang at 45. After careful analysis, we continue to find that the information in the Tribune of India article constitutes the “best available” information for purposes of valuing raw honey. We further find that our use of 35 Rs. per kg. as the basis for calculating respondents’ normal values and margins furthers the goal of calculating antidumping duty margins “as accurately as possible.” Our analysis is set forth below.

(1) ***The Tribune of India Article Constitutes the Best Available Information for Valuing Raw Honey in this Proceeding.***

When calculating “normal value” in an NME case, section 773(c)(1) of the Act directs the Department to use the “best available information” to value the factors of production in an appropriate surrogate country. The statute does not dictate a single method for making this determination, but “grants Commerce broad discretion to determine the ‘best available’ information in a reasonable manner on a case-by-case basis.” Peer Bearing Co. v. United States, 182 F. Supp. 2d 1285 (CIT 2001) (citing Lasko Metal Products Inc., v. United States, 43 F3rd 1442, 1446 (Fed Cir. 1994)).

In exercising its discretion to determine what constitutes the “best available” information for surrogate value purposes, the Department considers the “quality, specificity, and

⁴ Suspension Agreement, 60 FR 42521. Finally, the Court states that “while Plaintiff’s reliance on the Suspension Agreement as evidence to refute a dumping or critical circumstances determination may not be justified, the actual facts relating to U.S. sales price resulting from compliance with the Suspension Agreement can be used to determine if a finding is supported by substantial evidence.” Zhejiang at 44.

contemporaneity of the data” when selecting from among several surrogate value data. See e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Polyethylene Retail Carrier Bags from the People’s Republic of China, 69 FR 3544 (January 2, 2004); Notice of Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews: Fresh Garlic from the People’s Republic of China, 68 FR at 68872 (December 10, 2003); Creatine Monohydrate from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 68 FR 62767 (November 6, 2003); Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Romania: Preliminary Results of Antidumping Duty Administrative Review, 68 FR 25335 (May 12, 2003); Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from the People’s Republic of China, 67 FR 31235 (May 9, 2002).

Stated differently, the Department attempts to find the most representative and least distortive market-based value in the surrogate country. See Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms from the People’s Republic of China, 66 FR 31204 (June 11, 2001), and accompanying Issues and Decision Memorandum at Comment 5. The Department undertakes this analysis on a case-by-case basis, carefully considering the particular facts of each industry. Moreover, the Department prefers to use industry-wide values, rather than the values of a single producer, wherever possible, because industry-wide values are more representative of prices/costs of all producers in the surrogate country. See Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review, 67 FR 72139, December 4, 2002, and accompanying Issues and Decision Memorandum at Comment 6. Finally, the Department “normally will use

publicly available information to value factors.” 19 C.F.R. § 351.408 (2000).⁵

The record of this proceeding contains three different sources with which to value the raw honey input, as follows: (1) a 1999 feasibility study of the Indian honey industry by the Agriculture and Processed Food Products Export Development Authority (APEDA study) (provided by plaintiffs); (2) an average raw honey price calculated from the 1999-2000 financial statement of an Indian honey cooperative, Mahabaleshwar Honey Producers Cooperative Society, Ltd. (MHPC) (provided by defendant-intervenors); and (3) an article entitled, “Apiculture, a major foreign exchange earner,” from the Tribune of India.⁶ We discuss below the Department’s evaluation of the quality, contemporaneity, and specificity for each of these potential sources, thereby, demonstrating that the raw honey values contained in the Tribune of India article constitute the “best information available” in this proceeding.

A. Analysis of Tribune of India Article

In evaluating the raw honey values from the Tribune of India, we reasoned in the final determination that pricing information in the Tribune of India article provided the “best available surrogate” for valuing raw honey in the investigation. We stated:

In this final determination, we have continued to value raw honey using the prices reflected in the article published in the Tribune of India, an Indian newspaper. The raw honey price data from the Tribune of India is the best available surrogate value for the

⁵ The use of publicly-available information from a single surrogate country is preferable to the use of data from a single producer because data from a single producer tends to be less representative of the cost of that input in the surrogate country. See Preamble to Department’s Regulations, Countervailing Duties; Final Rule, 63 FR 65348, 65378 (November 25, 1998) at 31 - 32.

⁶ In addition, although not placed before the Department during the investigation by any of the parties, nor argued to be used as a potential surrogate value, the Court indicates that the reference prices in the Suspension Agreement may be used for purposes of determining whether or not the Department’s surrogate value calculation is supported by substantial evidence. Zhejiang at 44.

following reasons: 1) it is the most contemporaneous, dated May 1, 2000; 2) the broad-based data is specific to Indian raw honey prices (i.e., generally Indian honey, like PRC raw honey, has a high moisture content); and 3) it is quality agricultural data.

Decision Memo at 21-22, Comment 4.

We have revisited our decision and find that the Tribune of India article is the best available information to value raw honey. In selecting the pricing information from the Tribune of India article as the most appropriate surrogate value to represent raw honey prices in India, the Department reasons that the raw honey pricing data in this article is the best quality data because (1) it is published, publicly-available data; (2) it was “intended to serve the Indian agribusiness community;” and (3) it is representative of the beekeeping honey industry in India. Decision Memo at 21-22, Comment 4. Therefore, the information in this article has “greater credibility” than would a similar article published only as a “general interest” article. Id.

With regard to specificity, a critical factor in determining which surrogate value is the most specific or comparable to the raw honey input consumed by PRC honey processors is moisture content. See Final Determination, Decision Memo at 17 - 22, Comment 4. This is important to consider because more raw honey will be consumed during the production process to reduce the moisture content to an acceptable level. As the record indicates, Indian raw honey generally has a high moisture content. See Respondents’ Surrogate Value Submission, at Exhibit 1, page 2, (April 4, 2001). Therefore, the Department finds that the country-wide raw honey prices from the Tribune of India article are the most specific to the raw honey consumed by honey processors in the PRC (i.e., generally, both have high moisture contents). In addition, the Department finds that the raw honey pricing information from the Tribune of India article meets

our criteria of specificity because it specifically addresses the sale price of raw honey in India.

Finally, with regard to contemporaneity, we note that the POI is January 1, 2000, through June 30, 2000. The Tribune of India article was originally published on January 1, 2000 and republished on May 1, 2000. See Tribune of India article. Therefore, the Department determines that the Tribune of India article and the raw honey pricing data therein to be the most contemporaneous data on the record because its publication dates coincide entirely with the POI.

B. Analysis of Other Information Submitted by the Parties

Using this same analysis, the Department has considered, but rejects as inappropriate, each of the other potential sources of surrogate raw honey values placed on the record by plaintiffs and defendant-interveners. Specifically, the Department has analyzed whether the plaintiffs' APEDA study and defendant-interveners' MHPC information are the best information available, based on the quality, contemporaneity, and specificity of the information in each of these sources. As discussed below, we continue to find that neither the APEDA study nor the information from the MHPC were more accurate or more representative than the publicly-available information from the Tribune of India article.

Specifically, with regard to the APEDA study, the Department has considered but rejects this study as a potential source of surrogate raw honey values. In putting forth this study, plaintiffs advocated the use of the stated raw honey rate of 25,000 Rs. per metric ton (i.e., 25 Rs. per kg.) reported in a 1999 feasibility study of the Indian honey industry by APEDA. See Respondents' Surrogate Value Submission at Exhibit 1 (April 4, 2001).

We note that the raw honey rate from the APEDA study, reported under a separate table, is not substantiated by information that explains how this raw honey rate was calculated or the

period of time it represents. Moreover, we find, as did the Court, this data is not specific to the prices of raw honey in India but rather “appears in the context of a discussion concerning the development of a model for ‘doubl[ing] the number of bee colonies every 2 years,’ not determining the value of honey.” Zhejiang at 42 and 43. Rather, the raw honey rate from the APEDA study is based on unsubstantiated projections or estimations.

With regard to contemporaneity, we note that the APEDA study is not contemporaneous with the POI. In this regard, the Court agreed, “the APEDA study does not specifically mention any date later than 1998 for the material referenced therein.” Zhejiang at 43. Therefore, we find that this data is not contemporaneous to the POI.⁷

In summary, we find that the APEDA study and the data therein does not meet any of the criteria (i.e., quality, specificity, and contemporaneity) used by the Department to select the best available surrogate value. In rejecting this study, we reiterate our findings from the Final Determination. We stated:

The APEDA study is a feasibility study which projects possible future revenues for Indian honey producers. The prices reflected in this study, therefore, are not actual market prices but rather price projections or estimates. Although respondents are correct that the Department has used projections in the past, its preference is still to use actual prices whenever appropriate actual prices are available. Furthermore, the APEDA study appears to have been completed in 1999; thus, its price projections for 1999 are probably based on information gathered prior to 1999. Therefore, the APEDA study is not contemporaneous with the POI.

⁷ The Court has specifically affirmed the Department’s decision that the overall raw honey information in the Tribune of India article was preferable to that offered by plaintiffs. As stated by the Court, “[a]s between the source of data relating to the price of honey Commerce selected, and that offered by Plaintiffs, Commerce appears to have used the more reliable source.” Zhejiang at 45. The Court found the raw honey surrogate source relied upon by the Department to address the sale price of honey to be contemporaneous with the POI and to be publicly-available information. Thus, the Court agreed that the raw honey pricing data from the Tribune of India article was the more specific and contemporaneous data, in comparison to the data offered by plaintiffs.

Decision Memo at 21-22, Comment 4.

Similarly, the Department has considered and rejects the average raw honey price based on MHPC's 1999-2000 financial statement. In putting forth the 1999-2000 MHPC financial statement as a potential source for surrogate raw honey values, defendant-interveners advocated the use of the average price (i.e., 53.5 Rs./kg. Unit Cost of Society Raw Honey + 60 Rs./kg. Unit Cost of Other Raw Honey divided by 2 = 56.75 Rs./kg.) at which the Indian cooperative (i.e., MHPC) purchased raw honey from its members during the period April 1, 1999, through March 31, 2000. See Petitioners' Final Surrogate Value Submission at 3 - 5 (July 3, 2001).

While the MHPC raw honey value is specific to the factor of production it represents, we have considered the quality of the potential surrogate value. The Department determines that the average raw honey price from the MHPC is not representative of raw honey prices in India pursuant to 19 U.S.C. § 1677b(c)(1)(B). As the Department stated in the Final Determination, "although, the MHPC is a cooperative, and hence likely buys raw honey from various sources, the value for raw honey reported on its financial statement represents the value as experienced by a single processor of honey in a particular region of India." Decision Memo at 21-22, Comment 4. And, as already noted above, the Department prefers to use industry-wide values, rather than the values of a single producer, wherever possible, because industry-wide values are more representative of prices/costs of all producers in the surrogate country. Since the average raw honey price from the MHPC's financial statement was based on information obtained from a single processor, it is not representative of all producers in India. Therefore, the MHPC average raw honey price is neither more accurate nor more reliable than the data from the Tribune of India article.

Furthermore, the MHPC raw honey value is based on various data that represents the average price paid to its members for raw honey during the period April 1, 1999, through March 31, 2000. The POI is January 1, 2000, through June 30, 2000. Hence, the MHPC average raw honey value contains data that represents prices paid to its members for a nine-month period that predates the POI. Thus, we find that this source of data is not fully contemporaneous.

In summary, we find that the MHPC average raw honey value does not meet the criteria of quality and contemporaneity used by the Department to select the best available surrogate value.

C. Other Potential Sources

In addition, the Department pursued its own search for potential surrogate values to value the raw honey input. Specifically, the Department located the Tribune of India article dated January 1, 2000 on April 10, 2001. See Preliminary Analysis Memo for Zhejiang, at Appendix X (May 4, 2001). As stated above, the preliminary determination was published on May 11, 2001. Preliminary Determination 66 FR 24101.

After issuing its preliminary determination, the Department searched for other potential surrogate information to value raw honey in India. As indicated by the record, we only located the republished Tribune of India article (in its Agricultural Edition) dated May 1, 2000. See Final Analysis Memo for Zhejiang, at Appendix IX (September 26, 2001). Our search for a suitable surrogate revealed no additional reliable or credible information on valuing raw honey in India other than the Tribune of India article; thus, we continued to rely on the published raw honey values appearing in the Tribune of India article as the basis for calculating the final

surrogate raw honey price of 35 Rs. per kg.⁸

D. Conclusion

Therefore, for all the reasons discussed above, we find that the surrogate value information from the Tribune of India article offers the most accurate and reliable calculation of plaintiffs' normal value pursuant to 19 U.S.C. § 1677b(c). The Tribune of India article constitutes the most reliable source on the record, and is a publicly-available article printed in a widely-distributed and established Indian newspaper, the Tribune of India (later republished in the Agricultural Edition of the Tribune of India). As explained above, because the data itself is the most representative of raw honey prices in India, and is quality data that is contemporaneous with the POI, as well as specific to the raw honey industry in India, the Department determines that it has relied upon the "best available information" on the record of these proceedings in valuing the raw honey input.⁹

Therefore, for all the reasons stated above, the Department concluded in the final determination, and continues to conclude in this remand, that information in the Tribune of India article constitutes the "best available" information for purposes of valuing raw honey.

⁸ Moreover, we note that in their April 4, 2001, surrogate value submission, plaintiffs stated that "Chinese respondents are still attempting to gather surrogate values for raw honey." See Respondents' Surrogate Value Submission, at 3 (April 4, 2001). Nevertheless, respondents did not provide surrogate information other than the APEDA study for the final determination. See Respondents' Final Surrogate Value Submission, at 2 - 4 (July 3, 2001).

⁹ In reaching our final determination, we complied with the stated preference under the regulation because we relied upon publicly-available data to value the raw honey input which was not producer-specific. Moreover, the principle of selecting "published" data has further been upheld by the CIT. See Union Camp Corp. v. United States, 941 F. Supp. 108,116 (CIT 1996).

(2) ***The Department's Use of 35 Rs. per kg. in Determining Normal Value is Rational and Reasonable.***

As noted above in the “background” section, the Court has further directed that, even if Commerce determines that the Tribune of India constitutes the “best available information” regarding the valuation of raw honey, Commerce must nevertheless “explain in detail” how the use of 35 Rs. per kg. in determining normal value “evidences a rational and reasonable relationship to the factor of production it represents.” Zhejiang at 45. We explain below how the Department’s use of a value of 35 Rs. per kg. evidences a rational and reasonable relationship to country-wide Indian raw honey values in this proceeding.

Having already determined that the Tribune of India article constitutes the “best available information” as the underlying source of raw honey surrogate values, the Department next calculated a Rs./kg. raw honey value of 35 rupees per kilogram based on a simple average of all raw honey pricing information from that article. In other words, the Department took the highest and lowest values in the Tribune of India article, and then averaged them together (i.e., $(25 \text{ Rs./kg.} + 45 \text{ Rs./kg.})/2 = 35 \text{ Rs./kg.}$). See Preliminary Analysis Memo for Zhejiang at 3 (May 4, 2001). The Department’s use of this “simple average” methodology to value country-wide raw honey surrogate values is rational and reasonable.

The Department normally uses a simple average to calculate surrogate values from a range of data because, absent evidence to the contrary, we assume all such values are equally representative of the surrogate experience. See Notice of Final Determination of Sales at Less Than Fair Value: Bicycles from the People’s Republic of China, 61 FR 19026, 19039 (April 30, 1996) (Bicycles from the PRC). The CIT has sustained the Department’s use of simple averages

when calculating surrogate values. See Rhodia, Inc. v. United States, 185 F. Supp. 2d 1343, 1349 (Commerce generally applies a “simple average” when calculating surrogate values). Thus, the Department’s use of a simple average to value raw honey in this case is consistent with its normal practice, and is rational and reasonable.

Further, based on the type of information available in the Tribune of India, the Department’s use of a simple average in this particular case is the most rational and reasonable method to calculate raw honey surrogate values. In this regard, we note that the information in the Tribune of India article appears to be based on a broad range of honey producing areas throughout India.¹⁰ However, the article does not specify whether any particular portion of the price range is associated only with beekeepers in a particular region of India, or whether the entire range of raw honey prices reflects a range of honey prices in all of the honey producing regions. Absent evidence to the contrary, we assume that the range of such surrogate prices are equally representative of the surrogate experience. See, e.g., Bicycles from the PRC. Using a simple average of the raw honey pricing information from the Tribune of India article permits us to calculate an overall average raw honey price that treats this range of surrogate prices equally. This is consistent with our normal practice in calculating surrogate values.¹¹

¹⁰ See Tribune of India article (stating “[t]he sale price of honey by beekeepers in India varies from Rs 25 to Rs 45 per kg . . .”). The article indicates that honey is produced in several areas throughout India, including Punjab, Haryana, Uttar Pradesh, Bihar, West Bengal, Tamil Nadu, Kerala, and Karnataka.

¹¹ We note that since the article only provides annual production figures for all of India, and does not otherwise break these figures down by region or supplier, we do not have the information necessary to calculate a more specific type of average, such as a weighted-average of the range of raw honey prices from the Tribune of India article.

Finally, due to the variability of the raw honey prices in India, and in order to fairly capture the variability of these prices, we must consider the entire range of the pricing information. Thus, using either end of the range (i.e., Rs. 25 or Rs. 45) without knowing the underlying reason for the difference between the high and low values would be distortive of country-wide prices, and therefore is unreasonable.

Thus, for all the reasons discussed above, the Department appropriately calculated an Indian raw honey surrogate value of 35 Rs. per kg. in determining plaintiffs' normal value, and this calculation is rational and reasonable.

(3) ***Use of the Suspension Agreement Reference Prices for Surrogate Value Purposes is Not Appropriate***

For all the reasons discussed above, the Department has determined in this remand that the Tribune of India article continues to constitute the "best available information" as the source for valuing raw honey, and that its use of that data to calculate a simple average of 35 Rs. per kg. to determine normal value is rational and reasonable. In adhering to these findings, the Department is mindful that, in its remand decision, the Court has noted that although plaintiffs' compliance with the Suspension Agreement may not be relied upon "as evidence to refute a dumping or critical circumstances finding," nevertheless, the "actual facts relating to U.S. sales price resulting from compliance with the suspension agreement can be used to determine if a finding is supported by substantial evidence." Zhejiang at 44, n.39. In light of this finding, the Court specifically instructed the Department to "explain in detail" how its use of 35 Rs. per kg. in determining normal value "furthers the goal of estimating antidumping duty margins as accurately as possible" should any resulting calculation "exceed that of the weighted-average of

the honey unit import values from all other countries during the POI.” Zhejiang at 45 - 46. We respond to this below.

A. Consideration of the Suspension Agreement is Not Appropriate under The Department’s Normal Surrogate Value Methodology

As a preliminary matter, we do not believe that the pricing information contained in the Suspension Agreement is appropriate for evaluating surrogate values in this case. In valuing the “factors of production” under its normal surrogate value analysis, section 773(c)(4)(A) of the Act instructs the Department to utilize, to the extent possible, the prices or costs “of factors of production” in market economy countries that are “at a level of economic development comparable to that of the nonmarket economy country.” 19 U.S.C. § 1677b(c)(4)(A) (emphasis added). As discussed below, the Suspension Agreement reference prices do not represent “factors of production,” nor do they represent prices from a country “comparable” to the PRC.

First, the Suspension Agreement reference prices include prices of *processed* honey (which is the subject merchandise). See the Department’s Memoranda Regarding Verification of U.S. Sales and Factor of Production Submitted by Respondents, July 27, 2001 (indicating that the U.S. import data used as the basis for the Suspension Agreement reference prices includes processed honey in bulk and/or packaged for retail as indicated by the Department’s verification findings (i.e., honey from the PRC is exported in 290-kilogram drums)).¹² The use of such prices, which include prices of the finished product (i.e., honey in drums) as the benchmark by which to evaluate surrogate values for raw honey, is not appropriate under the statute because the

¹² We note that although not dispositive, the description for the HTSUS heading used to calculate the reference prices (i.e., 0409.00.00) include natural honey not packaged for retail, and comb honey and honey packaged for retail sale.

surrogate values selected should, “to the extent possible,” be based on the values of the “factors of producing” the merchandise in the surrogate country. 19 C.F.R. § 1677b(c)(4)(1).

Second, the Suspension Agreement prices are based on honey prices *in the United States*. The Department does not consider the United States to be a country “at a level of economic development comparable” to the PRC. Rather, in line with its normal practice, the Department initially found in the Preliminary Determination that India, Pakistan, Indonesia, Sri Lanka, and the Philippines were the countries “most comparable” to the PRC in terms of overall economic development. See Preliminary Determination, 66 FR at 24105. In the Final Determination, the Department determined that India was the most appropriate country for surrogate value purposes.¹³

Therefore, for all the reasons discussed above, we determine it is not appropriate to consider the Suspension Agreement reference prices as an appropriate benchmark by which to gauge the accuracy of the Department’s raw honey surrogate value calculations. In reaching this conclusion, we note that section 773(c)(2) of the statute permits an exception to the Department’s normal surrogate value analysis (discussed above, and undertaken pursuant to section 773(c)(4)(A)), if the Department finds that “available information is inadequate” to determine normal value using the “factors of production” methodology. 19 U.S.C. § 1677b(c)(2). In such a case, if the Department is unable to calculate normal value based on surrogate “factor of production” values, the Department may determine normal value based on the “price” at which

¹³ Based upon information in the petition and past Department practice, we selected India as the appropriate surrogate country. Preliminary Determination at 24105. In the instant case, neither petitioners nor respondents contested the Department’s use of Indian surrogate data or provided surrogate values from other market economy countries (*i.e.*, U.S. import data) with which to value the factors of production.

“comparable” merchandise is “sold in other countries, including the United States.” 19 U.S.C. § 1677b(c)(2).¹⁴

In applying this provision in the past, however, the Department has only resorted to the use of “prices” of “comparable” merchandise sold in the United States if it has no other suitable surrogate value representing the factors of production in the surrogate country. Thus, in Final Determination: Certain Cased Pencils from the People’s Republic of China, the Department relied on *U.S. selling prices* to value the main raw material input for pencils (*i.e.*, wood) because “no surrogate market” prices were found for the most similar wood input (*see* 59 FR 55625, 55630 (Nov. 8, 1994)). As further explained in a later determination, the Department resorted to the use of surrogate values based on U.S. selling prices “because the U.S. information was for a product more closely matching the input we were trying to value.” *See Freshwater Crawfish Tail Meat from the PRC; Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, and Final Partial Rescission of Antidumping Duty Administrative Review*, 66 FR 20634 (April 24, 2001), and accompanying Issues and Decision Memorandum at Comment 1. *See also Writing Instruments Manufacturers Assoc. v. United States*, 984 F. Supp. 629 (CIT 1997) (affirming the Department’s use of U.S. basswood prices to value PRC lindenwood).

As noted above, we have already determined that India is a suitable surrogate country, and that we have an adequate information source in that country to value the raw honey input. The pricing information from the Tribune of India article specifically addresses raw honey prices

¹⁴ Thus, this provision authorizes the Department to consider information such as that contained in the Suspension Agreement reference prices (*i.e.*, U.S. selling “prices” of processed honey), provided that the Department determines that “available information” for determining normal value using its standard surrogate methodology is “inadequate.” *Id.*

in India, represents quality agricultural data, and is contemporaneous with the POI. We determine that it would not be appropriate to use U.S. selling prices of honey products in this case for purposes of evaluating Indian surrogate values for raw honey. In particular, we note that the suspension agreement reference prices are based on prices for both *processed* honey and *raw* honey, which as already explained above, includes products not as closely matching the raw honey input as the surrogate values from the surrogate country.

Therefore, for all the reasons stated above, the Department finds it is inappropriate under its established practice and policy to rely on the reference prices calculated under the Suspension Agreement for purposes of calculating or evaluating its surrogate values in this case.

B. The Suspension Agreement Reference Prices are Otherwise Distorted, and Therefore, Cannot be Used as a Benchmark to Measure the Accuracy of the Raw Honey Surrogate Values.

As explained above, the Department finds that it is neither appropriate nor useful to compare the calculated surrogate values (based on Indian raw honey values) and the resulting normal values to the Suspension Agreement reference prices. Nevertheless, in order to be as responsive as possible, we address here the Court’s concerns that our surrogate values result in normal values that “exceed” the “weighted-average of the honey unit import values from all other countries during the POI.”

First, and foremost, we find that the reference prices calculated under the Suspension Agreement themselves are distorted, and therefore do not serve as a reliable benchmark for determining the accuracy of the Department’s normal value calculations. In particular, we note that the reference prices were severely impacted by a large volume of low-priced imports from Argentina during the POI. Indeed, Argentine producers/exporters of honey were found to be

dumping. See ITC Notification of Affirmative Final Determinations, dated September 28, 2001. Moreover, evidence on the record confirms that Argentina was the major source of U.S. honey imports in 1999 and 2000 (which would be the time period accounting for the relevant suspension agreement reference prices), and that Argentine import prices were also falling during this time. See Letter from Law Firm of Collier Shannon to the Secretary of Commerce Re: Honey from Argentina and the People’s Republic of China, dated September 29, 2000 (Petition) at 7 and 11 - 12. As evident from the Petition, Argentina accounted for more than 50 percent of all U.S. honey imports during 1999 and 2000. Id. Further, U.S. import statistics demonstrate that the “average unit values” (AUVs) of Argentine honey decreased from \$0.69 per pound in 1997, to only \$0.42 by the year 2000. See, Id., at Exhibit G-11. This is a drop in unit value of approximately 40 percent.

We find that this large volume of lower priced honey imports from Argentina distorted the suspension agreement prices. This is evident from the fact that, under the suspension agreement reference price calculations (i.e., weighted average price of U.S. imports from all countries, excluding the PRC), Argentina’s imports accounted for approximately 76 percent (by volume) of the reference price calculations.¹⁵ See Attachment II. Given the predominant impact of Argentine imports on the reference price calculations, the drop in Argentine prices “drove down the suspension agreement prices” lower than they should have been. See Petition at 7 - 8.

¹⁵ The Suspension Agreement reference prices applicable to the POI were calculated as follows: (1) Customs Volume and Value figures were summed for the six month period of July 1999, through December 1999, (2) figures for this period were further summed to arrive at the Total Customs Value and the Total Volume in Kilograms, (3) the Total Customs Value was divided by the Total Volume in Kilograms to arrive at a Total Average Unit Value, and (4) the Total Average Unit Value per kilogram was multiplied by 0.92 to arrive at the Reference Price. See Attachment I.

To further demonstrate this distortion, we have recalculated¹⁶ the reference prices excluding Argentine imports. See Attachment II. If these changes are made to the Suspension Agreement reference prices before comparing them to the Department’s calculated normal values for respondents, then the Department’s calculated normal values based on the raw honey surrogate value of 35 Rs. per kg. do not exceed that of the weighted-average of the honey unit import values from all countries other than the PRC and Argentina during period July 1999, through December 1999. See Attachment II. As noted in Attachment II, once Argentine imports of honey are excluded, the reference price increases to \$1,311 per metric ton, which exceeds the average of our NV calculations for respondents by approximately \$100 per metric ton. See Attachment II and Respondents’ Final Analysis Memos, dated September 26, 2001.

Finally, we further note that the suspension agreement prices do not actually reflect “honey unit import values from all other countries during the POI”, as suggested by the Court. Rather, as noted above, the suspension agreement reference prices actually reflect honey unit import prices from a period prior to the POI (i.e., up to six months prior to the POI). See footnote 15, *infra*. Therefore, in order to properly compare our NV calculations to the weighted-average honey unit import values “during the POI,” as directed by the Court, it is necessary to further recalculate the suspension agreement prices to reflect the POI. To do this, we used the following methodology: (1) identified Customs Volume and Value figures for the POR months

¹⁶ To perform this calculation, we used the same methodology to calculate reference prices under the suspension agreement, but we excluded Argentine imports. Thus, we: (1) identified Customs Volume and Value figures for the six month period of July 1999, through December 1999 (excluding PRC and Argentine import data), (2) summed figures for this period to arrive at the Total Customs Value and the Total Volume in Kilograms, (3) the Total Customs Value was divided by the Total Volume in Kilograms to arrive at a Total Average Unit Value, and (4) the Total Average Unit Value per kilogram was multiplied by 0.92 to arrive at the Reference Price (exclusive of PRC and Argentine import data).

of January 2000, through June 2000 (excluding distortive import data from the PRC and Argentine), (2) summed figures for this period to arrive at the Total Customs Value and the Total Volume in Kilograms, and (3) the Total Customs Value was divided by the Total Volume in Kilograms to arrive at a Total Average Unit Value for the actual POI-months. We provide a summary of our calculations in Attachment III, which has been prepared using information from Exhibit G-11 of the Petition. As noted in Attachment III, once Argentine imports of honey are excluded, the Department's calculated normal values for respondents based on the raw honey surrogate value of 35 Rs. per kg. do not exceed that of the weighted-average of the honey unit import values from all countries other than the PRC and Argentina during the POI.

CONCLUSION

In summary, for all the reasons discussed above, the Department's determination to use the publicly-available raw honey information from the Tribune of India article to calculate respondents' normal value is (1) based on the "best available information," (2) evidences a "rational and reasonable relationship to the factor of production it represents," and (3) furthers our goal of estimating antidumping duty margins as accurately as possible. Accordingly, the Department's decision and the methodology relied upon is supported by substantial evidence, and otherwise in accordance with law.

Analysis of Interested Party Comments

Petitioners

Petitioners state that Argentine imports during the period July through December 1999 accounted for more than 76 percent of all non-PRC imports and dramatically lowered the average unit values (AUVs) of imports from all countries other than the Argentina and the PRC.

Petitioners agree with the Department in that when Argentine imports are excluded from the imports used to calculate the reference prices, the resulting reference prices are higher than the calculated surrogate values based on Indian raw honey values.

However, petitioners amplify the Department's reasoning stating that, given the predominance of the substantially lower-priced Argentine imports during this period, the price of imports from all countries other than Argentina and the PRC were distorted, in that they were significantly lower than what would have been the case had those imports not been forced to compete for sale in the United States with much lower-priced and dominant Argentine imports. Therefore, petitioners argue that the AUVs for non-PRC/non-Argentine imports during the relevant period, the POI (i.e., January 1, 2000, through June 30, 2000), would have been much higher had the massive Argentine imports not been sold at dumped prices, which would have made the Indian calculated surrogate values that much lower. In this regard, petitioners assert that, the Department's analysis is conservative.

Department's Response

The Department generally agrees with petitioners' assertion that the AUVs of imports from all countries other than Argentina and the PRC were likely suppressed because lower-priced Argentine imports during the POI forced these exporters to compete with Argentine prices in

order to sustain entry in the U.S. honey market and that our approach is conservative. However, we note that petitioners' contention that "the Indian calculated surrogate values [would have been] that much lower," requires a leap in analysis for which petitioners have not provided support.

James J. Jochum
Assistant Secretary
for Import Administration

Date