

ZHEJIANG NATIVE PRODUCE & ANIMAL BY-PRODUCTS IMPORT & EXPORT CORP.

v. UNITED STATES

Court No. 04-00268

(August 3, 2015)

**FINAL RESULTS OF REDETERMINATION
PURSUANT TO REMAND**

SUMMARY

After releasing a draft remand and receiving comments from interested parties, the U.S. Department of Commerce (“the Department”) has prepared this final redetermination pursuant to the remand order from the United States Court of International Trade (“CIT”) in *Zhejiang Native Produce & Animal By-Products Import & Export Corp. v. United States*, Court No. 04-00268 (August 3, 2015) (“*Zhejiang ARI*”). These remand results concern the final results of the first administrative review of the antidumping duty order on honey from the People’s Republic of China (“PRC”).¹ The United States requested a voluntary remand to allow parties to comment on, and for the Department to consider, certain information regarding the surrogate value for raw honey that was not placed on the record during the underlying administrative review. The CIT

¹ See *Honey From the People’s Republic of China: Final Results of First Antidumping Duty Administrative Review*, 69 FR 25060 (May 5, 2004), and the accompanying “Issues and Decision Memorandum for the Final Results of the First Administrative Review of the Antidumping Order on Honey from the People’s Republic of China,” dated April 28, 2004 (“Decision Memorandum”) (collectively, “*Final Results*”) as amended by *Honey From the People’s Republic of China: Amended Final Results of First Antidumping Duty Administrative Review*, 69 FR 32494 (June 10, 2004) (“*Amended Final Results*”).

granted the request, and remanded to the Department the issues of the proper surrogate value for raw honey and the proper surrogate value for financial ratios, as discussed further below.

We solicited comments from interested parties concerning the proper surrogate value for honey. Specifically, we requested comments on information that was not placed on the record of the administrative proceeding until after the *Final Results* and *Amended Final Results*. The information consists of a total of eleven documents, including email correspondence, memoranda concerning telephone calls, and a letter and notes, all of which concern research into the price of raw honey in India.² In light of this information, we asked parties for comments regarding:

(1) the Department's use of publicly available information from an article published in the *Tribune of India* in March of 2000 ("March 2000 article") as the "best available" surrogate for valuing raw honey;

(2) the Department's adjustment of the raw honey values from the March 2000 article, in order to account for dramatic raw honey price increases since the data's collection, and,

(3) the Department's determination to compare United States prices to a single normal value, rather than monthly normal values.³

A summary of interested party comments is below. In addition, and in accordance with the CIT's remand, the Department has considered the question of the appropriate surrogate financial statements for the calculation of factory overhead, selling, general and administrative expenses, and profit. Based on our analysis of information on the record, and considering comments from interested parties, in our Draft Redetermination⁴ we preliminarily found that a change in the surrogate value for raw honey was not warranted. Further, we found that a change

² See Letter to All Interested Parties, dated October 21, 2015, at Attachment I. On October 21, 2015, the Department placed this letter on the record, in which documents cited by number 121 to 131 throughout this draft remand were contained in Attachment 1. Page 10 of Attachment 1 contains a detailed index of the documents.

³ *Id.*

⁴ See Letter to All Interested Parties, dated December 31, 2015 ("Draft Redetermination").

in the financial statements for calculating surrogate values for factory overhead, selling, general and administrative expenses, and profit, was not warranted. After releasing our draft remand redetermination, and analyzing comments from parties, we have made no changes from our draft remand redetermination.

BACKGROUND

On December 10, 2001, the Department published an amended final determination of sales at less than fair value, and an antidumping duty order, on honey from the PRC.⁵ As part of the Department's amended final determination, the Department made affirmative critical circumstances determinations for Zhejiang and certain other firms.⁶

On January 20, 2003, the Department initiated an administrative review of the antidumping duty order on honey from the PRC covering the period February 10, 2001, through November 30, 2002.⁷ In the administrative review, the Department determined normal value using a factors of production ("FOP") methodology, pursuant to section 773(c) of the Tariff Act of 1930, as amended ("the Act") and selected India as the primary surrogate country from which to derive surrogate values.

The Department published the preliminary results of review on December 16, 2003.⁸ For the *Preliminary Results*, the Department determined to use the 2001-2002 Mahabaleshwar Honey Producers Cooperative Society, Ltd ("MHPC") financial statements to value Zhejiang's factory overhead, SG&A, and profit.⁹ For the surrogate value of raw honey, the Department

⁵ See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Honey From the People's Republic of China*, 66 FR 63670 (December 10, 2001) ("*Amended Final Determination and Order*").

⁶ *Id.*, at 63672.

⁷ See *Initiation of Antidumping and Countervailing Administrative Review and Requests for Revocation in Part*, 68 FR 3009 (January 22, 2003) ("*Initiation Notice*").

⁸ See *Honey from the People's Republic of China: Preliminary Results of First Antidumping Duty Administrative Review*, 68 FR 69988 (December 16, 2003) ("*Preliminary Results*").

⁹ *Id.*, at 69993.

preliminarily determined to use the average of the highest and lowest price for one kilogram of raw honey stated in an article published in *The Tribune of India* on March 1, 2000, and, to account for raw honey price increases in India, inflated the average raw honey price from the March 2000, *Tribune of India* article to December 2001 by dividing the Indian wholesale price index (WPI) for December 2001 by the Indian WPI for March 2000.¹⁰

On May 5, 2004, the Department published the *Final Results*, in which the Department adjusted the calculation methodology for the surrogate value for raw honey by calculating a value for the entire POR, in order to capture increases in raw honey prices during certain months of the POR.¹¹ On May 4, 2004, the Department received timely-filed ministerial error allegations from Zhejiang. On June 10, 2004, the Department published the *Amended Final Results*, which corrected certain ministerial errors.¹²

Zhejiang challenged the *Final Results* and *Amended Final Results* before the CIT. On November 19, 2004, the Department amended the record of the proceeding to add 11 documents

¹⁰ *Id.*

¹¹ See Decision Memorandum at page 17. In the *Preliminary Results*, the Department inflated the surrogate value for raw honey to November 2002 and used that value (*i.e.*, the fully inflated value as of November 2002) for the entire POR. The Department explained its adjusted surrogate value calculation for the *Final Results* as follows: the Department derived the simple average of prices from the March 2000 article and subsequently inflated this value to December 2001 by using the Indian WPI for March 2000 for the time period February 2001 through December 2001. Following that, to account for increases in Indian raw honey prices from December 2001, through May 2002, in excess of inflation, the Department averaged raw honey purchase prices from the Tiwana and Jallowal Bee Farms submitted by Petitioners in Exhibit 1 of their July 7, 2003, submission, to calculate a total average raw honey price for each month for the period December 2001, through May 2002. Next, the Department calculated monthly price increases on a percentage-basis, and then applied these price increases to our adjusted raw honey price from the March 2000 article. Finally, we calculated a simple average of these adjusted monthly raw honey prices to derive our raw honey surrogate value for the period for which we had raw honey purchase pricing data (*i.e.*, December 1, 2001, through May 31, 2002). For the remaining time period (June 2002 through November 2002), the Department further adjusted the raw honey surrogate value for inflation by the average WPI. To adjust this value for the entire POR, the Department summed the adjusted raw honey prices for three different periods of time within the POR and then divided this sum by the number of periods to reach an average raw honey value for the POR.

¹² See *Amended Final Results*.

that were not included in the original record,¹³ but were identified as part of a Freedom of Information Act (FOIA) request filed by Zhejiang.

At the same time that Zhejiang challenged the Department's *Final Results* as amended, litigation concerning the Department's final determination of critical circumstances in the less than fair value investigation of honey from the PRC ensued.¹⁴ In light of the fact that the POR for the first administrative review was, in part, based on the Department's finding of critical circumstances in the investigation, the CIT stayed further action pending the outcome of the litigation relating to the investigation. The CIT affirmed the Department's finding on remand of no critical circumstances on June 18, 2013.¹⁵

On March 16, 2015, Zhejiang filed a status report with the CIT in the instant case. On July 15, 2015, the CIT requested that the Department and Zhejiang file briefs in response to the status report. On August 3, 2015, the CIT remanded this case to the Department. Specifically, the Court 1) granted the Department's request for a voluntary remand to reconsider the issues related to the surrogate value for raw honey, 2) remanded the issue of the selection of the appropriate financial statements, and 3) requested that the Department recalculate Zhejiang's dumping margin to reflect the different POR resulting from the decision in *Zhejiang Native Produce & Animal By-Products Import & Export Corp. v. United States*, Court No. 02-00057.

On October 21, 2015, the Department solicited comments from all interested parties.¹⁶ Both Petitioners and Zhejiang submitted comments and rebuttals, as discussed below. The Department released the Draft Redetermination on December 31, 2015, and invited comments

¹³ See Letter to All Interested Parties, dated October 21, 2015, at Attachment I.

¹⁴ See *Zhejiang Native Produce & Animal By-Products Import & Export Corp. v. United States*, Court No. 02-00057.

¹⁵ See *Zhejiang Native Produce & Animal By-Products Import & Export Corp. v. United States*, 2013 WL 2996235, Slip Op. 13-76 (Ct. Int'l Trade Jun. 18, 2013).

¹⁶ See Letter to All Interested Parties, dated October 21, 2015.

from parties.¹⁷ Both Petitioners and Zhejiang filed comments on the Draft Redetermination on January 7, 2016,¹⁸ which are discussed below.

SUMMARY OF ARGUMENTS

Interested Parties' Pre-Draft Remand Comments

As referenced above, the Department initially requested that interested parties submit comments on three issues related to the raw honey surrogate value: (1) the Department's use of publicly-available information from the March 2000 article as the "best available" surrogate for valuing raw honey; (2) the Department's adjustment of the raw honey values from the March 2000 article, in order to account for dramatic raw honey price increases since the data's collection; and, (3) the Department's determination to compare United States price to a single normal value, rather than monthly normal values.¹⁹ Both Petitioners and Zhejiang submitted timely comments and rebuttals. Their arguments are summarized as follows.

Petitioners' Arguments

"Best Available" Surrogate for Raw Honey

Petitioners argued that the Department's use of the Indian honey prices reported in the March 2000 article to value the PRC raw honey factor is lawful and that this is supported by the fact that the CIT upheld the Department's usage of the March 2000 value in the new shipper review ("NSR") for Wuhan Honey Bee Healthy Co., Ltd. ("Wuhan").²⁰ Petitioners state that in

¹⁷ See Draft Redetermination.

¹⁸ See Letter from Honey Producers Association and Sioux Honey Association, "Remand of the 1st Administrative Review of Honey from the People's Republic of China (*Zhejiang Native Product & Animal By-Products Import & Export Corp. v. United States*, CIT No. 04-00268) – Petitioners' Comments on the Department's Draft Redetermination," dated January 7, 2016, at 4-5 ("Petitioners' Comments on Draft") and Letter from Zhejiang Native Produce and Animal By-Products Group, "Comments on draft remand determination: First Administrative Review of the Antidumping Duty Order on Honey from the People's Republic of China (POR 1; Remand)," dated January 7, 2016 ("Respondent's Comments on Draft").

¹⁹ See Letter to All Interested Parties, dated October 21, 2015.

²⁰ See Letter from Honey Producers Association and Sioux Honey Association, "Remand of the 1st Administrative Review of Honey from the People's Republic of China (*Zhejiang Native Product & Animal By-Products Import &*

the Wuhan NSR, which had a POR that overlapped with this segment, the Department selected the value from an article published in the March 2000 article to construct the value of Indian raw honey instead of a value from an article published in March of 2001 in the *Tribune of India* (“March 2001 article”).²¹ Petitioners note that, in the NSR results regarding the proper source for the raw honey surrogate value, the Department stated that it had “concerns as to the reliability and quality” of the pricing that was detailed in the March 2001 article, citing numerous “internal inconsistencies.”²² Petitioners state that the Department’s concerns over the reliability of the March 2001 article included questions regarding the prices quoted in the article, specifically whether the prices pertained to Indian honey or to honey imports from China and other countries.²³ In addition, Petitioners state that the Department did not use the March 2001 article in part because the prices appeared to be limited to raw honey prices in northern India, rather than honey prices country-wide.²⁴ Also, Petitioners note that the Department did not find the March 2001 article to be of a greater probative value simply because it was closer in time to the POR for the administrative review than the March 2000 article.²⁵ In contrast, Petitioners state that the Department did not have similar concerns or findings with respect to the reliability of the March 2000 article, and accordingly used that source to calculate the surrogate value for raw honey.²⁶

Petitioners assert that the CIT affirmed the Department’s methodology in subsequent litigation, finding that the Department’s reasons for using the March 2000 article were based on

Export Corp. v. United States, CIT No. 04-00268) – Petitioners’ Comments on New Factual Information,” dated November 4, 2015, at 4-5 (“Petitioners’ Brief”).

²¹ *Id.*, at 5, citing to *Notice of Final Results of Antidumping Duty New Shipper Review: Honey From the People’s Republic of China*, 68 FR 62053 (October 31, 2003) (“Wuhan NSR”), and accompanying Issues and Decision Memorandum at 16, 18-19 (“Wuhan NSR I&D”).

²² *Id.*, at 6, citing to *Wuhan NSR I&D* at 18.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*, citing to *Wuhan NSR I&D* at 16, 18.

substantial evidence on the record.²⁷ Petitioners indicate that the Department supplemented the CIT record in *Wuhan Bee* with ten of the same eleven documents which the Department added to the record of this proceeding, and that Wuhan addressed the information in these documents in its brief to the CIT.²⁸ Petitioners state that, nevertheless, the CIT upheld the Department's use of the March 2000 article, citing the procurement price, the article's limitation to prices from northern India, discrepancies with Indian import statistics, and unclear or confusing language, as shortcomings that influenced the CIT's decision.²⁹ Petitioners aver that the CIT also stated that “[w]here there exists on the record ‘alternative sources of data that would be equally or more reliable . . . it is within Commerce’s discretion to use either set of data.’”³⁰

Petitioners state that the Department, in accordance with the same methodology applied in the *Wuhan NSR*, utilized the March 2000 article to calculate the surrogate value for raw honey for the *Final Results*.³¹ With respect to the eleven documents placed on the record after the completion of the administrative review, Petitioners claim that these documents should not alter the Department's reasoning that underpinned the use of the March 2000 article in the *Final Results*.³² For the single document on the record of this proceeding which is not on the record of *Wuhan Bee* (Public Document 131, an email exchange between an analyst at the Department and a representative of the U.S. Department of Agriculture based in India), Petitioners state that this document discusses non-public prices for several different time periods, only one of which

²⁷ *Id.*, at 7-8, citing to *Wuhan Bee Healthy Co., Ltd. v. United States*, 374 F. Supp. 2d 1299, 1304 (CIT 2005) (“*Wuhan Bee*”).

²⁸ *Id.*, at 7.

²⁹ *Id.*, at 7-8.

³⁰ *Id.*, at 8.

³¹ *Id.*, at 9, citing to the *Final Results*, and accompanying Issues and Decision Memorandum, at 9-12.

³² *Id.*, at 9-10.

overlaps with the POR.³³ Therefore, Petitioners argue, these prices cannot be used to calculate a surrogate value for raw honey.³⁴

Petitioners argue that the sole purported advantage of the March 2001 article, namely that it was published during the second month of the original POR, is negated by the separate decision by the CIT affirming the Department's finding of no critical circumstances during the investigation.³⁵ Petitioners note that this finding shifts the POR's beginning to May 2001, from February 2001, and that the March 2001 article is thus no longer contemporaneous with the POR.³⁶

Finally, Petitioners suggest that if the Department has concerns with using the March 2000 article to calculate a raw honey surrogate value because the article does not represent a country-wide price, the Department may use prices from both articles and inflators to calculate a surrogate value for raw honey.³⁷

Adjustment of the Raw Honey Values

Petitioners note that the Department's use of the honey prices from the Jallowal and Tiwana Bee Farms to inflate the March 2000 article for six months of the administrative review POR was affirmed by the CIT in *Wuhan Bee*.³⁸ Moreover, Petitioners state that there is no new information on the record to suggest that the methodology should be revised.³⁹ Petitioners assert that, consistent with the Department's practice as established in *Wuhan NSR*, the prices from Jallowal and Tiwana Bee Farms are the best available for calculating price increases beyond inflation as they are "the only documented raw honey values from actual Indian producers on the

³³ *Id.*, at 11.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*, at 13 and Attachment 4.

³⁸ *Id.*, at 14.

³⁹ *Id.*

record completely contemporaneous with the POR.”⁴⁰ Petitioners note that the CIT upheld this methodology in *Wuhan Bee*.⁴¹ Petitioners also cite to certain other cases where the Department used commodity-specific inflators where such data was available and where there was evidence that price changes were different than general inflation during the POR.⁴²

Single Normal Value v. Monthly Normal Values

Petitioners argue that the Department’s calculation of a single normal value (compared to monthly normal values) for the POR, was supported by substantial evidence on the record and in accordance with law.⁴³ Petitioners contend that the calculation of monthly normal values by the Department, as advocated by Zhejiang, is not relevant to the non-market economy (“NME”) methodology.⁴⁴ In addition, Petitioners state that the Department calculated a raw honey surrogate value that covers the entire POR, and was not limited to the six month period that the Department inflated using the Jallowal and Tiwana Bee farms prices.⁴⁵ Finally, Petitioners claim that the new information on the record of this proceeding does not question or undermine the Department’s single average normal value methodology.⁴⁶

Zhejiang’s Arguments

“Best Available” Surrogate for Raw Honey

Respondent Zhejiang argues that, due to the introduction of new information on the record, the Department’s original determination to calculate a surrogate value from the March

⁴⁰ *Id.*, at 14-15, citing to *Wuhan NSR I&D* at 18-19.

⁴¹ *Id.*, at 15.

⁴² *Id.*, at 15-16.

⁴³ *Id.*, at 16.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

2000 article, rather than the March 2001 article, was unsubstantiated by evidence on the record.⁴⁷ Zhejiang states that the Department’s normal practice is to consider the relative “quality, specificity, and contemporaneity of the data” when evaluating the merits of different sources for surrogate values.⁴⁸ In light of all of the information on the record, specifically examining the issues of quality, specificity, and contemporaneity, Zhejiang believes that the March 2001 article is the most appropriate source to calculate the surrogate value for raw honey.

Zhejiang addresses each issue in its brief. With respect to the issue of contemporaneity, Zhejiang states that the March 2001 article was published two months before the amended POR, while the March 2000 article is not contemporaneous with the POR.⁴⁹ Zhejiang contends that it is the Department’s practice to select surrogate values based on the closest proximity to the POR, in order to calculate dumping margins as accurately as possible.⁵⁰ Zhejiang also emphasizes that the March 2001 article’s greater contemporaneity is important given the Department’s application of “special” inflators beyond the Wholesale Price Index that account for significant price variations during the POR of this proceeding.⁵¹

With respect to the issue of specificity, Zhejiang states that while the Department found the March 2000 article to be specific, the Department did not consider the specificity of the March 2001 article in the *Final Results*. Zhejiang argues that, in light of the new information now on the record, both the March 2000 article and the March 2001 article are equally specific,

⁴⁷ See Letter from Zhejiang Native Produce and Animal By-Products Group, “Comments on New Information: First Administrative Review of the Antidumping Duty Order on Honey from the People’s Republic of China (POR 1; Remand),” dated November 4, 2015 (“Respondent’s Brief”) at 7-8.

⁴⁸ *Id.*, at 7.

⁴⁹ *Id.*, at 8.

⁵⁰ *Id.*, at 8-9, citing to *Sebacic Acid from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 65 FR 49537 (August 14, 2000) and accompanying Issues and Decision Memorandum at Issue 9, and *Notice of Final Determination of Sales at Less Than Fair Value: Ferrovandium from the People’s Republic of China*, 67 FR 71137 (November 29, 2002), and accompanying Issues and Decision Memorandum at Comment 19.

⁵¹ *Id.*, at 9-10.

as both articles reflect honey prices in public markets in India.⁵² Zhejiang concludes that since both are equally specific, the Department should rely on the more contemporaneous price.⁵³

Finally, concerning reliability, Zhejiang avers that the price of raw honey is more reliable in the March 2001 article than the March 2000 article. Zhejiang makes the following claims with respect to the reliability of both articles: (1) both articles are from the same publication; (2) both articles represent prices in a specific geographic region, rather than the entire country (despite what the Department originally found for the March 2000 article in the *Final Results*); (3) the prices in the March 2001 article represent raw honey prices from a large honey-producing state, whereas the March 2000 article represents prices for raw honey only from a city that is not a major producer of honey; (4) the new documents on the record include an email indicating that the author of the March 2001 article is credible and the source of the prices from this article are known, dispelling the Department's cited "internal inconsistencies"; (5) that the Department's acceptance of an article by the same author in 2003 for a separate segment of this proceeding undermines the contention that the March 2001 article information is unreliable, and (6) even if the data provided by Zhejiang in July 2003 did not corroborate the March 2001 article, it should not render the March 2001 article unreliable.⁵⁴ Zhejiang requests that the Department reverse its earlier determination and select Rs. 24 per kilogram as the surrogate value for raw honey, based on the March 2001 article.⁵⁵

Adjustment of the Raw Honey Values

With respect to the question of the new information and the additional "inflator" that the Department used in the *Final Results*, Zhejiang states that the amended record reveals that the

⁵² *Id.*, at 10.

⁵³ *Id.*, at 11.

⁵⁴ *Id.*, at 11-15.

⁵⁵ *Id.*, at 15.

March 2000 article prices are specific to a market in the city of Madras and that the March 2001 article price is derived from market prices in the state of Punjab.⁵⁶ Since the source of the inflator were honey prices from bee farms in the state of Punjab, which is the same region as the source of prices in the March 2001 article, Zhejiang argues that the Department should revise its earlier decision, use the March 2001 article prices, and not apply an inflator to those prices.⁵⁷ Zhejiang argues that market prices from the March 2001 article should be used over those of individual firms, that the starting calculation should be the March 2001 reported price of Rs. 24 per kilogram, and that the price of the final month in the POR should be capped at Rs. 39 per kilogram (an average price found in one of the documents which supplemented the record of this proceeding).⁵⁸ In addition, Zhejiang asserts that if the Department had used the two individual bee farm prices to calculate surrogate value, the raw honey price would be lower than the price that the Department constructed in the *Final Results*.⁵⁹

Single Normal Value v. Monthly Normal Values

Zhejiang claims that the Department's inflation of the surrogate value for raw honey to account for rising prices at the end of the POR, while rejecting the use of financial ratios that cover the same period of time, skewed the findings in the *Final Results*.⁶⁰ Zhejiang requests that the Department, if it continues to inflate the raw honey surrogate value to offset the price increase at the end of the POR, should also use the financial ratios obtained from the 2002-2003 MHPC financial statements, given that these financial statements would cover the period involving honey price increases.⁶¹

⁵⁶ *Id.*, at 15-16.

⁵⁷ *Id.*

⁵⁸ *Id.*, at 16.

⁵⁹ *Id.*

⁶⁰ *Id.*, at 17.

⁶¹ *Id.*

Petitioners' Rebuttal

"Best Available" Surrogate for Raw Honey

Petitioners state that neither the March 2001 article nor the March 2000 article is contemporaneous with the revised POR of the administrative review.⁶² Petitioners assert that Zhejiang's claims that the Department's practice is to use surrogate values that are as close as possible to the period of review is wrong.⁶³ Petitioners counter by stating that: (1) contemporaneity matters when the Department is selecting from two or more equally valid surrogate values, but the sources in question are not equally valid according to *Wuhan Bee*; (2) contemporaneity is not the exclusive factor governing the Department's selection of a surrogate value, and; (3) the CIT has found that contemporaneity is not a compelling factor when a relatively short time period separates the two competing surrogate value sources.⁶⁴

Regarding the quality of the data in both articles, Petitioners indicate that the new information on the record demonstrates that the prices in both the March 2000 article and the March 2001 article reflect regional prices.⁶⁵ Nevertheless, Petitioners assert that Zhejiang's claim that the March 2001 prices are superior is incorrect.⁶⁶ Petitioners contend that record evidence indicates that the prices from both articles were obtained from sales of honey collected throughout the agricultural regions surrounding the markets where the honey was sold.⁶⁷ Next, Petitioners assert that the location of the market that was the source of data in the March 2000 article is in the Indian state of Tamil Nadu, which the article itself indicates is a major honey

⁶² See Letter from Honey Producers Association and Sioux Honey Association, "Remand of the 1st Administrative Review of Honey from the People's Republic of China (*Zhejiang Native Product & Animal By-Products Import & Export Corp. v. United States*, CIT No. 04-00268) – Petitioners' Rebuttal Comments on New Factual Information," dated November 4, 2015 ("Petitioners' Rebuttal Brief") at 3.

⁶³ *Id.*

⁶⁴ *Id.*, at 3-4. With respect to the CIT's decision, Petitioners cite to *Hebei Metals & Minerals Import and Export Corp. v. United States*, 366 F. Supp. 2d 1264, 1274-75 (CIT 2005).

⁶⁵ *Id.*, at 4-5.

⁶⁶ *Id.*, at 5.

⁶⁷ *Id.*

producing region in India.⁶⁸ Additionally, with respect to Zhejiang's claims regarding the amount of honey produced in Punjab, Petitioners contend that the Department previously found the figure quoted in the March 2001 article to be confusing, and that the amount could not be verified.⁶⁹

Petitioners maintain that the March 2001 article's reliability remains in question because it refers to prices for Indian honey being affected by low-priced honey imports from China, Germany, Argentina and Australia.⁷⁰ However, Petitioners note that the Department found that import statistics did not show imports from these countries during the period before the article's publication.⁷¹ Petitioners argue that the Department found no discrepancies in the March 2000 article that would undermine its quality, and argue that neither the new documentation on the record nor Zhejiang's comments have provided any new information to the contrary.⁷²

Adjustment of the Raw Honey Values

Petitioners state that while Zhejiang challenged the Department's use of the Jallowal and Tiwana Bee Farms to inflate the surrogate value, Zhejiang has not demonstrated why the Department's methodology is unlawful.⁷³ In fact, Petitioners again note that the CIT upheld the Department's use of these inflators in the Wuhan NSR.⁷⁴ Likewise, Petitioners argue that Zhejiang's request that the Department cap the surrogate value is flawed, since the capped price is derived from sources that may represent prices from private companies and are thus not publically available.⁷⁵ Lastly, Petitioners contend that the prices from the two bee farms which are used to calculate the inflator do not undermine the Department's surrogate value even though

⁶⁸ *Id.*

⁶⁹ *Id.*, at 6.

⁷⁰ *Id.*, at 6-7.

⁷¹ *Id.*

⁷² *Id.*, at 7.

⁷³ *Id.*, at 7-8.

⁷⁴ *Id.*

⁷⁵ *Id.*, at 8.

they are not the best available information to use as a surrogate value for raw honey (*i.e.*, given that they are specific to only two producers, from one region, rather than the entire country).⁷⁶

Single Normal Value v. Monthly Normal Values

Petitioners claim that Zhejiang's assertions regarding the inflator and the financial statements, and the purported resulting "skewed results," do not answer the question that the Department asked in its request for comments and thus, the Department should treat Zhejiang's comments as non-responsive.⁷⁷ Petitioners argue that Zhejiang is attempting to introduce a new comment on a separate issue regarding the valuation of financial ratios using the 2002-2003 financial statements from MHPC.⁷⁸ Petitioners state that, should the Department choose to consider these comments, it should still reject the use of the 2002-2003 MHPC financial statements.⁷⁹

Respondents' Rebuttal

"Best Available" Surrogate for Raw Honey

Zhejiang states that the Department should reject Petitioners' argument that the Department should rely on the March 2000 article, since it was used in the Wuhan NSR and upheld by the CIT.⁸⁰ Zhejiang argues that each annual review is a separate proceeding and that the Department should not rely on surrogate value data if it is not found to be the "best available."⁸¹ Zhejiang opines that a reevaluation of the surrogate value of raw honey is warranted because the Department did not consider the new information on the record in its original findings in the *Final Results* and in the Wuhan NSR, and that this new information

⁷⁶ *Id.*

⁷⁷ *Id.*, at 9.

⁷⁸ *Id.*, at 9-10.

⁷⁹ *Id.*

⁸⁰ See Letter from Zhejiang Native Produce and Animal By-Products Group, "Rebuttal Comments on New Information: First Administrative Review of the Antidumping Duty Order on Honey from the People's Republic of China (POR 1; Remand)," dated November 9, 2015 ("Respondent's Rebuttal Brief") at 2.

⁸¹ *Id.*

reveals that the prices in the March 2000 article are not country-wide, contrary to the Department's analysis in the *Final Results*.⁸²

Moreover, Zhejiang argues that while neither article is contemporaneous with the amended POR, the March 2001 article is closer than the March 2000 article, and the Department has often included the relative proximity of surrogate values to the POR as an important factor in its analysis.⁸³ Finally, Zhejiang considers Petitioners' suggestion that the Department employ an average that takes into account the prices from the March 2000 article and the March 2001 article.⁸⁴ Zhejiang states that this new calculation of Rs. 36.484 per kilogram is a more appropriate price than the Department's initial determination, which constructed the surrogate value solely from the March 2000 article.⁸⁵

Department's Position

After careful consideration of comments by parties and an analysis of the information on the record, we continue to find that the March 2000 article constitutes the "best available information" for purposes of valuing raw honey pursuant to section 773(c)(1) of the Act. We further find that our methodology for calculating the surrogate value, using the raw honey prices from the aforementioned article and inflating them based upon three separate time periods within the POR and then determining a single surrogate value for the entire POR (using a simple average of each inflated value), is the most appropriate methodology.

When calculating "normal value" in a 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

⁸² *Id.*, at 2-3.

⁸³ *Id.*, at 4.

⁸⁴ *Id.*, at 5-6.

⁸⁵ *Id.*

determination, but “grants Commerce broad discretion to determine the ‘best available’ information in a reasonable manner on a case-by-case basis.”⁸⁶ In exercising its discretion to determine what constitutes the “best available” information for surrogate value purposes, and as we stated in the *Final Results*, the Department considers the “quality, specificity, and contemporaneity of the data” when selecting from among several surrogate value data.⁸⁷ Also, the Department prefers, whenever possible, to use country-wide data, or industry-wide values (rather than the values of a single producer), and only resort to company-specific information when country-wide data is not available.⁸⁸ In addition, the Department prefers to rely on publicly-available data to value factors of production.⁸⁹

Use of the March 2000 Article or the March 2001 Article

In the *Final Results*, the Department relied on the March 2000 article to calculate the surrogate value for raw honey, adjusting the prices from this article to account for inflation and for rapidly rising prices during a portion of the POR.⁹⁰ Explaining its selection of the March 2000 article, the Department stated that the article contains 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 throughout India.⁹¹

Subsequent to the *Final Results* and *Amended Final Results*, two events occurred which merit considerations in this remand redetermination. First, as noted above, with the decision in *Zhejiang Native Produce & Animal By-Products Import & Export Corp. v. United States*, CIT

⁸⁶ See *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)).

⁸⁷ See Decision Memorandum at Comment 3, page 9.

⁸⁸ See, e.g., *Fresh Garlic from the People’s Republic of China: Final Results of Antidumping Duty New Shipper Review*, 67 FR 72139 (December 4, 2002).

⁸⁹ See *Freshwater Crawfish Tail Meat from the People’s Republic of China: 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 2.

⁹⁰ See Decision Memorandum at Comment 3.

⁹¹ *Id.*

No. 02-00057 (June 18, 2013), the POR for this administrative review changed. We have shortened the POR by 90 days, which now begins on May 11, 2001, rather than February 11, 2001. As a result, neither the March 2000 article nor the March 2001 article is contemporaneous with the revised POR. Second, as also noted above, the Department supplemented the record of this proceeding with eleven new documents after the Department filed the record of the administrative review with the CIT on August 16, 2004. Based on this additional record information, as Zhejiang states⁹² and Petitioners acknowledge,⁹³ neither of the articles covers honey prices for all of India. Instead, both articles appear to reflect honey prices in two different regions in India.

While Zhejiang argues that the prices from the March 2000 article are based on prices solely from the city of Madras (now Chennai), whereas the prices from the market in Punjab reflect a region,⁹⁴ Petitioners argue that the market in Madras likely reflects prices from farmers that travel to the city from the nearby region.⁹⁵ Additionally, we note that the March 2001 article does not indicate if the market in Punjab is based in a specific city. We thus agree with Petitioners that the prices from both articles likely reflect farmers coming from a region to a central location (such as a city) to sell raw honey.⁹⁶ Evidence on the record indicates that the prices in the March 2000 article appear to represent prices from a major honey producing region

⁹² See Respondent's Brief at 11-15.

⁹³ See Petitioners' Rebuttal Brief at 4-5.

⁹⁴ See Respondent's Brief at 15-16.

⁹⁵ See Petitioners' Rebuttal Brief at 5. Petitioners cite to the Department's December 10, 2003, Factors of Production Valuation Memorandum, which indicated that the state of Tamil Nadu (of which Madras is the state capital) ranks first in honey production in India, citing to information in the March 2000 article.

⁹⁶ See Letter to All Interested Parties, dated October 21, 2015, at Attachment I, Document #130. Document #130 summarizes a conversation between the Department and the author of the March 2000 article, in which the author indicates that the source of the prices in the article is from a honey market in the state of Madras (and not country-wide).

in India⁹⁷ and note that record evidence further indicates that both the market in Madras and the market in the state of Punjab are two of the three known honey markets in India.⁹⁸

Thus, both the March 2000 article and the March 2001 article provide publicly available data from the same quality publication (*i.e., Tribune of India*), that are intended to serve the Indian agribusiness community. Neither article represents country-wide Indian honey prices, nor is either article contemporaneous with the POR. Nevertheless, we continue to find that the March 2001 article contains internal inconsistencies that undermine the reliability and quality of the raw honey pricing information therein and is not substantiated by the data on the record. In particular, in the *Final Results*, we stated that the March 2001 article appeared to identify imports from four countries as suppressing Indian honey prices, but that Indian government import statistics did not show honey imports from those countries during the relevant period.⁹⁹ Further, it is not clear whether the raw honey pricing information in respondent's article refers to all raw honey sold in India, or only that sourced from China, Argentina, Germany, and Australia.¹⁰⁰ Specifically, the following quote from the article creates confusion as to the prices stated: "Dr. Madhu Gill, Chairperson of the Northern India Beekeepers Association says that the honey from China, Argentina, Germany, {and} Australia is landing in the country at a price varying between Rs. 20 to 25 per kg. It has affected the bee-keepers in a big way. The production cost of honey in India is near Rs. 23 per kg and procurement price is only Rs 24.

⁹⁷ See Petitioners' Rebuttal Brief at 5, citing to the "Memorandum to the File regarding Preliminary Results of the First Administrative Review of the Antidumping Duty Order on Honey from the People's Republic of China; Factors of Production Valuation" (December 10, 2003) at Attachment 3 p. 2-7.

⁹⁸ See Respondent's Brief at 7. See also the October 21, 2015, letter, Documents #126, #130 and #131 in Attachment I. Page 2 of Document #130 states in part "The article mentions prices (Rs 25 to 45 per kg) that were taken from the raw honey sellers market in Madras, India (where farmers meet to sell raw honey)."

⁹⁹ See Decision Memorandum at Comment 3, page 11.

¹⁰⁰ See Document 123, concerning the March 2001 Article, in the also the October 21, 2015, letter at Attachment I.

Honey is procured by private traders. Moreover, while the production per box in America is near 70 kg per year, in India it is just 20 to 25 kg.”¹⁰¹

Where there exists on the record “alternative sources of data that would be equally or more reliable . . . it is within Commerce’s discretion to use either set of data.”¹⁰² In this instance, we find that the March 2000 article represents more reliable data, as the March 2000 article contains none of the internal inconsistencies that exist in the March 2001 article (as noted above).

With respect to the issue of contemporaneity, while contemporaneity is one factor considered by the Department in choosing a suitable surrogate value, contemporaneity is not the exclusive factor governing the Department’s decision.¹⁰³ Additionally, as we noted previously, with the change in the POR, neither the March 2000 article nor the March 2001 article are now contemporaneous with the POR. In this instance, we find that the internal inconsistencies that undermine the reliability of the March 2001 article outweigh the fact that the March 2001 article prices come from a time period which is closer to the POR.

None of the new information on the record of this administrative review contradicts our analysis of this issue in the *Final Results*,¹⁰⁴ nor does the new information clarify the inconsistencies contained in the March 2001 article. For example, Zhejiang claims that “{a}ny question which the Department may have had as to the reliability of the information of the Rs/kg 24 price quoted in the March 2001 has been dispelled by the fact that Department officials directly involved in this proceeding spoke to Mr. Dhaliwal by telephone, at which time he

¹⁰¹ *Id.*

¹⁰² See *Geum Poong Corp. v. United States*, 26 CIT 322, 326, 193 F. Supp. 2d 1363, 1369 (2002).

¹⁰³ See *Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Ukraine*, 67 FR 55785 (August 30, 2002) and accompanying Issues and Decision Memorandum at Comment 1.

¹⁰⁴ *Id.*

provided the precise source of his pricing information.”¹⁰⁵ Zhejiang then, as support for this assertion, references Document 123 in the attachment to the Department’s October 21, 2015, letter. However, Document 123 mentions that prices are affected by factors such as international competition, and does not clarify whether the prices from the raw honey market in Punjab include imports from other countries. Additionally, Zhejiang references Document 125 and states that the document confirms “. . . that Mr. Dhaliwal is a knowledgeable, credible source of information on honey prices in China.”¹⁰⁶ However, the question of Mr. Dhaliwal’s knowledgeability does not assuage the Department’s concerns regarding the inconsistencies of the March 2001 article. With respect to the other documents attached to the Department’s October 21, 2015, letter, Documents 121, 122, and 127 contain emails or notes which do not discuss pricing information for raw honey. Documents 125 and 126 are emails requesting raw honey prices from the author of the 2001 article, Mr. Dhaliwal, and a U.S. Department of Agriculture employee based in India, and do not contain any information regarding pricing that the Department could use in its analysis. Documents 123, 124, 128, 129, 130, and 131 do discuss raw honey prices in India; however, in some instances the prices discussed in these documents occurred after the completion of the POR. In other instances, the prices are unsubstantiated or not publicly-available,¹⁰⁷ or (as noted above) do not clarify the inconsistencies in the March 2001 article.

Moreover, the CIT previously upheld the Department’s decision to use the March 2000 article over the March 2001 article in *Wuhan Bee*. In that decision, the CIT stated in part:

¹⁰⁵ See Respondent’s Brief at 13.

¹⁰⁶ *Id.*, at 14.

¹⁰⁷ Petitioners note that Document 131 is an exchange of emails between a Commerce official and an official with the U.S. Department of Agriculture in India, which contains multiple prices for raw honey, many of which do not correspond with the POR. See Petitioners’ Brief at 11. Petitioners also note that the Commerce official stated in the email that the prices could not be used without further corroboration. *Id.* Finally, Petitioners state that the prices were collected from non-public sources and, thus, should not be used to calculate a raw honey surrogate value. *Id.*

“Commerce is also justified in finding that it is not clear whether the article’s pricing information “refers to all raw honey sold in India, or only that sourced from China, Argentina, Germany, and Australia.” Def.’s Resp. at 16 (citing Issues and Decision Mem. at 18). It is indeed unclear how Dr. Gill arrived at a procurement price of Rs. 24 and this lack of clarity is compounded by the reference to selected countries. Though the information conveyed may be in two separate sentences, the sentences are part of a three-sentence string of related, if confusing, information.”¹⁰⁸

As we also noted in the *Final Results*, the fact pattern in the Wuhan NSR was the same as in this administrative review.¹⁰⁹

As noted above, as with the *Wuhan Bee NSR*, the Department finds that nothing on the record of this proceeding clarifies this same confusion for this administrative review. Therefore, we continue to calculate the surrogate value for raw honey using the March 2000 article prices.

The Appropriate Inflation for the Surrogate Value

In the *Final Results*, we valued raw honey using the following methodology. The Department derived the simple average of prices from the March 2000 article and subsequently inflated this value to December 2001 by using the Indian WPI to first inflate the value to January of 2001, and then to inflate it again using the Indian WPI for the time period February 2001 through December 2001. Following that, to account for increases in Indian raw honey prices from December 2001, through May 2002, in excess of inflation, the Department averaged raw honey purchase prices from the Tiwana and Jallowal Bee Farms submitted by Petitioners in Exhibit 1 of their July 7, 2003, submission, to calculate a total average raw honey price for each month for the period December 2001, through May 2002. Next, the Department calculated monthly price increases on a percentage-basis, and then applied these price increases to our adjusted raw honey price from the March 2000 article. Finally, we calculated a simple average of these adjusted monthly raw honey prices to derive our raw honey surrogate value for the

¹⁰⁸ See *Wuhan Bee* at 8-9.

¹⁰⁹ *Id.*, at 14.

period for which we had raw honey purchase pricing data (*i.e.*, December 1, 2001, through May 31, 2002). For the remaining time period (June 2002 through November 2002), the Department further adjusted the raw honey surrogate value for inflation by the average WPI. To derive a single surrogate value for raw honey reflective of the entire POR, the Department summed the adjusted raw honey prices for three different periods of time within the POR and then divided this sum by the number of periods to reach an average raw honey value for the POR.¹¹⁰

With respect to the inflator used to adjust prices for six months of the POR, we agree with Petitioners that the Department's practice is to use an inflator specific to a commodity in cases where the prices changes for that commodity are significantly different from general inflation.¹¹¹ This is consistent with the CIT's finding in *Wuhan Bee*, where the CIT upheld the identical inflator methodology for the same time period.¹¹²

Zhejiang has provided no new evidence to indicate that the Department should adjust its methodology. As to Zhejiang's contention that the Department should cap the increase, Zhejiang cites Document 131 of the amended record, which is a conversation between the Department and an agricultural specialist.¹¹³ The information in this document appears to be prices obtained from sources that are not publicly-available and this information is not substantiated.¹¹⁴ Thus, there is no publicly available information on the record which would direct the Department to

¹¹⁰ See Decision Memorandum at Comment 4.

¹¹¹ See *Fresh Garlic From the People's Republic of China: Final Results and Final Rescission, in Part, of the 2008-2009 Antidumping Duty Administrative Review*, 76 FR 37321 (June 27, 2011), and accompanying Issues and Decision Memorandum at Comment 4.

¹¹² See *Wuhan Bee* at 11 – 12; “Here, the Jallowal and Tiwana Bee Farms data indicated that raw honey prices increased at a significantly greater rate during the POR than did the WPI. Because this data was the only information on the record demonstrating the extent to which prices had increased, it was therefore the best available information. Moreover, Commerce’s decision to reject the Jallowal and Tiwana Bee Farms data for use in calculating the surrogate value for raw honey was based on separate criteria from its decision to use the data to calculate the inflator. In the absence of any other pertinent information on the record, the CIT finds reasonable Commerce’s decision to use the Jallowal and Tiwana Farms data for this limited purpose.”

¹¹³ See Decl. of Angelica Mendoza f 4, November 19, 2004 (EOF No. 28).

¹¹⁴ See Letter to All Interested Parties, dated October 21, 2015, at Attachment I.

change its methodology and cap the inflator. Therefore, we are not adjusting our inflator calculation methodology for this review, except to reflect the revised POR. We will continue to calculate three separate inflator rates based on the methodology applied in the *Final Results*, with the exception of the first period, which will be shorter due to the revised POR.

Single Normal Value vs. Monthly Normal Values

With respect to a single raw honey surrogate value for the entire POR, as the Department stated in the *Final Results*, a hyperinflation methodology for calculating normal value is not applicable to NME proceedings.¹¹⁵ In addition, we noted that the calculated surrogate value for raw honey covered the entire POR and was not based simply on the highest inflated value from the end of the POR.¹¹⁶ Zhejiang has presented no arguments against the Department's single normal value methodology other than a brief discussion of proper financial statements, which are discussed below.

Surrogate Valuation of Factory Overhead, SG&A, and Profit

As noted previously, we calculated surrogate values for factory overhead, SG&A, and profit using information derived from the publicly-available 2001-2002 financial statements of an Indian cooperative honey producer, MHPC. Although Zhejiang asserts that the Department should have used information from the MHPC 2002-2003 financial statements for the 2001-2002 period of review, the alternative data Zhejiang proposed was not the "best available information" because of concerns pertaining to: (1) contemporaneity (the 2002-2003 data cover fewer of the months in the period of review than the data upon which the Department relied); and (2) the

¹¹⁵ See Decision Memorandum at Comment 4, page 17. Previously, when the Department applied the hyperinflation methodology, we were using our market economy methodology and had evidence that the market economy in question had hyperinflation during the POR. See, e.g., *Certain Oil Country Tubular Goods From the Republic of the Philippines: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 79 FR 41976 (July 18, 2014), and accompanying Issues and Decision Memorandum at footnote 28.

¹¹⁶ *Id.*

representativeness of the data (improper reliance upon changes for a single input, rather than company financial experience as a whole). For these reasons, the Department relied upon information in the MHPC 2001-2002 financial data to value Zhejiang's factory overhead, SG&A, and profit.

Section 773(c) of the Act grants considerable discretion to the Department in choosing among surrogate values for valuing the factors of production. The Department is required to base its valuation upon the "best available information" that the Department considers "appropriate."¹¹⁷ As noted above, the Department selects surrogate value information based upon the quality, specificity, and contemporaneity of the data. The Department normally values factory overhead, SG&A, and profit using non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country.¹¹⁸ In selecting MHPC's financial data, the Department noted that the MHPC 2001-2002 data constituted the best available information upon the record in terms of "quality and reliable data."¹¹⁹ The data was specific, as it was "narrowly tailored to subject merchandise."¹²⁰ It was also more contemporaneous than the April 2002 to March 2003 data advocated by Zhejiang, which covered only eight months out of the February 2001 through November 2002 period of review, as compared to the twelve months covered by the April 2001 to March 2002 data selected by the Department.¹²¹ Thus, the Department used MHPC's publicly-available 2001-2002 financial data to value Zhejiang's factory overhead, SG&A, and profit in accordance with its normal NME practice and regulations.

¹¹⁷ See *Nation Ford Chem. Co. v United States*, 166 F.3d 1373 (Fed. Cir. 1999).

¹¹⁸ See 19 CFR 351.408(c)(4).

¹¹⁹ See Decision Memorandum at 19.

¹²⁰ *Id.*

¹²¹ *Id.*

Zhejiang asserts that the Department's decision to reject the MHPC 2002-2003 financial information was contrary to law and internally inconsistent.¹²² Zhejiang claims that the Department's decision does not bear a rational and reasonable relationship to the factor it represents and is contrary to law because it resulted in a distorted calculation.¹²³ First, Zhejiang asserts that it would have been "more accurate to use the MHPC 2002-2003 annual report."¹²⁴ Second, Zhejiang contends that the Department's finding is "flawed and completely misses the point, because raw honey is the single most important input into honey and therefore the financial experience of a honey producer is so sensitive to raw honey prices that the Department erred by not matching those experiences."¹²⁵

We disagree with Zhejiang. The Department properly exercised its discretion and continues to determine that the MHPC 2001-2002 financial information, not the 2002-2003 data, are the best available information.¹²⁶ We continue to find that there are two principal problems with Zhejiang's proposal: non-contemporaneity and the lack of representativeness of the data. As we noted in the underlying review, ". . . MHPC's 2002-2003 financial statement is less contemporaneous for the entire POR than the MHPC 2001-2002 financial statement used by the Department."¹²⁷ Even with the new POR, the data from the MHPC 2001-2002 financial statement cover more of the POR than the data from the MHPC 2002-2003 financial statement. Second, respondent's assertion that we should calculate our surrogate SG&A ratio to more closely correspond to the time period when raw material prices increased is incorrect . . . "[T]o do so would improperly weight the surrogate financial ratios according to a single input, and not

¹²² See Zhejiang's Case Brief at 35.

¹²³ *Id.*, at 35-36.

¹²⁴ *Id.*, at 36.

¹²⁵ *Id.*, at 36-37.

¹²⁶ See Decision Memorandum at 19-20.

¹²⁷ *Id.*, at 19.

the surrogate company's experience as a whole."¹²⁸ Contending that its suggested data is "more accurate," Zhejiang maintains that the Department, faced with a choice of two competing sets of data, should have selected the one more favorable to Zhejiang. Specifically, Zhejiang asserts that "it is more accurate to use the 2002-2003 MHPC annual report as it covers the period with rapidly increasing honey prices selected by the Department to calculate its inflators to the raw honey surrogate value."¹²⁹

Contrary to Zhejiang's assertions, even if the Department were to focus upon the six month time period where the Department found that there were higher raw honey prices prevalent, *i.e.*, December 2001 through May 2002, the data suggested by Zhejiang only covers two of those months (that is, April and May 2002), whereas the data selected by the Department covers four of the relevant months (that is, December 2001 through March 2002). MHPC's 2001-2002 financial statements provide data that are largely contemporaneous with the new POR, covering over 10 months of the POR. Accordingly, the 2001-2002 MHPC financials, which cover more than 10 months of the POR, are preferable to data from the 2002-2003 MHPC financials that are based upon a fiscal year that is only contemporaneous for eight months of the POR.

Concerning its argument regarding an alleged linkage between financial ratios and significant price increases in the raw honey price (that is, "the material costs reflected in that year's financial statement corresponded more closely to the raw honey price trend observed by the Department,"),¹³⁰ Zhejiang has not cited to any evidence on the record to support its factual assertion as to a linkage between the material cost of raw honey and the resulting calculation of surrogate ratios for overhead, SG&A and profit, which are derived from the financial statements

¹²⁸ *Id.*

¹²⁹ *See* Zhejiang's Case Brief at 36-37.

¹³⁰ *Id.*, at 4.

of Indian honey producers. Contrary to Zhejiang's contentions, it is not the Department's practice to base its selection of a source with which to calculate surrogate financial ratios upon a single input.¹³¹ As the Department stated in the *Final Results*, to do so would improperly weight the surrogate financial ratios according to a single input, and not the surrogate company's experience as a whole.¹³² Accordingly, the Department has continued to rely upon MHPC's 2001-2002 financial statements to calculate the surrogate financial ratios in this final remand.

Additionally, the Department's methodology for calculating the overall SG&A amount already adequately considers any increases in the raw honey input costs because the Department calculates a total SG&A amount by multiplying the SG&A ratio by the raw honey value.¹³³ Based upon these findings, the Department continues to conclude that the MHPC 2001-2002 financial statements are a better surrogate for valuation of the factory overhead, SG&A, and profit of a PRC honey producer during the period from May 2001 through November 2002 than the MHPC 2002-2003 financial statements.¹³⁴ Zhejiang has failed to demonstrate that the Department's choice was unreasonable or not in accordance with law. When the Department is faced with two possible alternatives and "one alternative is favored over the other in their eyes, then they have the discretion to choose accordingly."¹³⁵

Recalculated Margins

The Department recalculated the inflators for the surrogate value for raw honey to cover the new POR. Using the new inflators, we calculated Zhejiang's dumping margin for the period May 11, 2001, to November 30, 2002. Based on our changes, we calculate a weighted-average

¹³¹ See Decision Memorandum at 19-20.

¹³² *Id.*

¹³³ *Id.*, at 19-20, fn 16.

¹³⁴ *Id.*

¹³⁵ See *Luoyang Bearing Factory v. United States*, 288 F. Supp. 2d 1369, 1375 (CIT 2003) (citing *Tehnoimportexport, UCF. Amer., Inc. v. United States*, 783 F. Supp. 1401, 1406 (CIT 1992)).

dumping margin of 67.06 percent *ad valorem* for Zhejiang's sales of honey from the PRC during the POR.¹³⁶

Interested Parties' Comments on the Draft Remand Results

In its Comments on the draft remand, Petitioners agreed with the Department's draft remand redetermination and argued that the Department's analysis was supported by substantial evidence and in accordance with the law in all respects.¹³⁷

In its Comments on the draft remand, Zhejiang asserts that the Department erred in its draft remand redetermination and requests that the Department reconsider its determination.¹³⁸ Zhejiang requests that the Department reconsider all of the arguments previously submitted in both Respondent's Brief and Respondent's Rebuttal Brief.¹³⁹ In addition to this general request, Zhejiang makes four specific arguments. Three of these concern the raw honey surrogate value, and one concerns the proper financial statements for surrogate values for financial ratios. These arguments are addressed below.

Raw Honey Surrogate Value

Comments by Zhejiang:

First, Zhejiang states that the Department failed to properly consider the fact that the March 2001 article is closer in time to the POR than the March 2000 article.¹⁴⁰ Second, Zhejiang asserts that any concerns with the March 2001 article were resolved by the Department's telephone conversation with the author of the article, which according to Zhejiang "expressly and

¹³⁶ See "Analysis of Data Submitted by Zhejiang Native Produce and Animal By-Products Import & Export Corp. a.k.a. Zhejiang Native Produce and Animal By-Products Import and Export Group Corporation (Zhejiang) in the Results of Redetermination Pursuant to Court Remand (Remand Results) of the First Administrative Review of the Antidumping Duty Order on Honey from the People's Republic of China," Dated concurrently with these draft results.

¹³⁷ See Petitioners' Comments on Draft at 3-7.

¹³⁸ See Respondent's Comments on Draft at 2-4.

¹³⁹ *Id.*, at 2.

¹⁴⁰ *Id.*

unequivocally advised that the source of the price in the article was a raw honey market in Punjab, in which honey is traded and raw honey prices are written down.”¹⁴¹ On the basis of the telephone conversation with the author of the March 2001 article, Zhejiang believes that the Department’s finding that the March 2000 article is more reliable than the March 2001 article “is belied by the Department’s own fact-finding.”¹⁴² Third, Zhejiang again states that, for all of the reasons discussed in Respondent’s Brief, the Department’s inflator methodology is not supported by substantial evidence and is contrary to law.¹⁴³

Department’s Position:

Zhejiang has raised no new arguments on the use of the raw honey surrogate value. We addressed each of these points in our Draft Redetermination.¹⁴⁴ Regardless, as to the three specific points reiterated by Zhejiang, we continue to disagree. As we noted in our Draft Redetermination, neither the March 2000 article nor the March 2001 article are contemporaneous with the POR and neither article represents country-wide honey prices.¹⁴⁵ While the March 2001 article is closer in time to the POR, the Department’s choice of a source for the surrogate value for raw honey is not based solely on which source is closer in time to the POR. We consider other factors as well. In this case, as we explained in the Draft Redetermination, the March 2001 article contains internal inconsistencies that undermine the reliability and quality of the raw honey pricing information therein and is not substantiated by the data on the record.¹⁴⁶ We find that the March 2000 article provides data which are not undermined by the same inconsistencies found in the March 2001 article, and are thus more reliable. As we noted in the Draft

¹⁴¹ *Id.*, at 2-3. Zhejiang alludes to Document 123 in Attachment I of the Letter to All Interested Parties, dated October 21, 2015. The Department’s analysis of the documents in Attachment I is below.

¹⁴² *Id.*, at 3.

¹⁴³ *Id.*

¹⁴⁴ See Draft Redetermination at 19-21; *supra* at 19-22.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*, at 19-20; see also *supra* at 19-20.

Redetermination, “Where there exists on the record ‘alternative sources of data that would be equally or more reliable . . . it is within Commerce’s discretion to use either set of data.’”¹⁴⁷

We disagree with Zhejiang that any concerns with the reliability of the data from the March 2001 article were resolved by the telephone conversation with the author of the article, as summarized in an addition to the record. Zhejiang refers to a telephone conversation discussed in Document 123 in the attachment to the Department’s October 21, 2015, letter.¹⁴⁸ However, as we noted in our Draft Redetermination, this document does not clarify whether the prices from the raw honey market in Punjab include imports from other countries.¹⁴⁹ Zhejiang does not point to any other record evidence that would otherwise clarify these issues and address the Department’s concerns regarding the reliability from the March 2001 article.

Finally, as we noted in the Draft Redetermination, Zhejiang provided no new evidence to indicate that the Department should adjust its methodology.¹⁵⁰ Zhejiang’s suggestion that the Department cap the inflator increases based on Document 131 of the Department’s October 21, 2015, letter relies on prices obtained from sources that are not publicly-available (and not substantiated).¹⁵¹ As Zhejiang has provided no new evidence on the record to substantiate its claim that our inflator methodology is incorrect, we are not making any adjustments to the methodology.

Financial Statements

Comments by Zhejiang:

Zhejiang argues that the Department’s choice of MHPC’s 2001-2002 financial statements for financial ratios, “rather than to average or weight average this statement with MHPC’s 2002-

¹⁴⁷ *Id.*, at 20, citing to *Geum Poong Corp. v. United States*, 26 CIT 322, 326, 193 F. Supp. 2d 1363, 1369 (2002).

¹⁴⁸ See Respondent’s Brief at 13.

¹⁴⁹ See Draft Redetermination at 21; *supra* at 21-22.

¹⁵⁰ *Id.*, at 24; *supra* at 24.

¹⁵¹ *Id.*

2003 statement,” is arbitrary and skews the results, and is “especially egregious when examined in conjunction with the Department’s decision to select the higher price to value raw honey.”¹⁵²

Department’s Position:

We disagree that it would be necessary to average the financial statements. It is the Department’s practice not to average financial statements for the same company when calculating surrogate values for financial ratios.¹⁵³ Instead, under the NME methodology, when deemed reliable, it is the Department’s established practice to select the most contemporaneous surrogate values to value the factors-of-production and financial ratios.¹⁵⁴ Averaging two financial statements from the same company does not result in a more accurate representation of the Indian honey industry because the Department “would be deriving financial ratios based on data that is less contemporaneous and creating a temporally less representative method for deriving financial ratios than simply using the most contemporaneous financial statements”¹⁵⁵ were it to average both of MHPC’s financial statements. As we noted in the Draft Redetermination, MHPC’s 2001-2002 financial statements are the most contemporaneous to the POR.¹⁵⁶ We also find that the statements are the best available information for valuing financial ratios because in addition, as we noted previously, the Department found that the MHPC 2001-2002 data constituted the best available information upon the record in terms of “quality and

¹⁵² *Id.*

¹⁵³ See *Honey From the People's Republic of China; Notice of Final Results of Antidumping Duty New Shipper Reviews*, 70 FR 9271 (February 25, 2005) and accompanying Issues and Decision Memorandum at Comment 3; see also *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of the First Antidumping Administrative Review and New Shipper Review*, 72 FR 52052 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 2 (discussing the Department’s practice in NME proceedings and establishing the Department’s preference to “use one set of financial statements from a company that overlaps the most months of the appropriate POR.”).

¹⁵⁴ *Id.*

¹⁵⁵ See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of the First Antidumping Administrative Review and New Shipper Review*, 72 FR 52052 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 2. The Department explained that “In this and future reviews, the Department intends to use one set of financial statements from a company that overlaps the most months of the appropriate POR.” *Id.* at page 7.

¹⁵⁶ See Draft Redetermination at 25, 27; *supra* at 25, 27-28.

reliable data.”¹⁵⁷ Also, the data was specific, as it was “narrowly tailored to subject merchandise.”¹⁵⁸ There is no evidence on the record to suggest that MHPC’s 2001-2002 financial statements are unreliable or otherwise do not meet our criteria for financial ratios. Therefore, consistent with the Department’s practice, we find that it would be inappropriate to average MHPC’s 2001-2002 and 2002-2003 financial statements for purposes of calculating surrogate value financial ratios. Finally, as we noted in the Decision Memorandum, it is improper to try and tailor financial ratios to a single surrogate value, in this case raw honey. “[T]o do so would improperly weight the surrogate financial ratios according to a single input, and not the surrogate company’s experience as a whole.”¹⁵⁹ It is not our practice to base its selection of a source with which to calculate surrogate financial ratios upon a single input. In applying section 351.408(c)(4) of the regulations, Commerce has consistently relied upon the experience of “producers of identical or comparable merchandise in the surrogate country.” Accordingly, Commerce continued to rely upon MHPC’s 2001-2002 financial statements to calculate the surrogate financial ratios in the Final Results.

CONCLUSION


Based on our revised POR, an analysis of the information obtained by and provided to the Department, and comments from interested parties, the Department has not changed the source of the surrogate value for raw honey for this administrative review. Additionally, the Department continues to use the same calculation methodology, adjusted for the revised POR dates, to determine the surrogate value for raw honey. In addition, we find that our calculation of

¹⁵⁷ See Decision Memorandum at 19. The Department stated that it considers “the quality, specificity, and contemporaneity” of data when selecting financial statements for surrogate values. MHPC’s 2001-2002 financial statements met these criteria because, in addition to being more contemporaneous, “MHPC’s {2001-2002} financial statement is specifically reflective of the production experience of an Indian honey producer” and is “narrowly tailored to subject merchandise, and do not include a wider range of other products,” thus allowing the Department to more accurately calculate the surrogate financial ratios.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

the surrogate values for factory overhead, SG&A, and profit, utilized the best information available. Accordingly, the Department has made no changes to the margin calculated for Zhejiang in the draft remand redetermination. As a result of this Remand Redetermination, the weighted-average dumping margin for Zhejiang's sales of honey from the PRC during the POR changes from 67.70 to 67.06 percent ad valorem.



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

10 FEBRUARY 2016
Date