

June 4, 2014

Artisan Manufacturing Corp. v. United States
Court No. 13-00169; Slip Op. 14-52 (CIT 2014)

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

A. Summary

The Department of Commerce (“Department”) prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (“CIT” or the “Court”), issued on May 5, 2014, in *Artisan Manufacturing Corp. v. United States*, Court No. 13-00169, Slip Op. 14-52 (CIT 2014) (“*Remand Order*”). These final remand results concern *Drawn Stainless Steel Sinks From the People’s Republic of China: Investigation, Final Determination*, 78 FR 13019 (February 26, 2013) (“*Final Determination*”), with respect to the antidumping duty (“AD”) investigation of drawn stainless steel sinks from the People’s Republic of China (“PRC”).

In the *Remand Order*, the Court remanded the Department’s assignment of the 76.53 percent PRC-wide AD margin to Shenzhen Kehuaxing Industrial Ltd. (“Kehuaxing”), which resulted from the Department’s rejection of Kehuaxing’s untimely quantity and value (“Q&V”) questionnaire response and the Department’s subsequent rejection of Kehuaxing’s separate rate application (“SRA”). Pursuant to the Court’s directive in the *Remand Order*, we requested and Kehuaxing timely provided these submissions for the record. Accordingly, under respectful protest,¹ we conducted a separate rate analysis and found that Kehuaxing demonstrated the absence of both *de jure* and *de facto* government control over its export activities and is thus eligible for a separate rate.

¹ See *Viraj Group, Ltd. v. United States*, 343 F.3d 1371 (Fed. Cir. 2003).

B. Background

Relevant Case History

In the *Initiation Notice* of the underlying investigation, the Department notified interested parties of a request for Q&V information from all known exporters and producers identified with complete contact information in the petition and that this Q&V questionnaire must be submitted by all Chinese exporters/producers no later than April 11, 2012, 21 days after the signature date (*i.e.*, March 21, 2012) of the notice.² The *Initiation Notice* also notified parties that, in order to obtain separate-rate status in a non-market economy (“NME”) investigation, exporters and producers must submit a separate-rate status application on May 29, 2012, 60 days after publication date (*i.e.*, March 27, 2012) of the notice, and that “the Department requires that the PRC respondents submit a response to both the quantity and value questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status.”³

Kehuaxing and Artisan Manufacturing Corporation (“Artisan”), a U.S. importer of Kehuaxing’s products,⁴ neither submitted a Q&V questionnaire response by the specified April 11, 2012, deadline, nor requested an extension of time prior to this deadline. On the morning of April 12, 2012, the Department received a Q&V questionnaire response on behalf of Kehuaxing, which included an explanation as to why the response was untimely. After considering Kehuaxing’s explanation, the Department found that it would not be appropriate to accept the

² See *Drawn Stainless Steel Sinks From the People’s Republic of China: Initiation of Antidumping Duty Investigation*, 77 FR 18207, 18210 (March 27, 2012) (“*Initiation Notice*”).

³ *Id.*

⁴ Collectively, the plaintiff/respondent “Artisan/Kehuaxing,” but referred to herein as simply “Kehuaxing.”

late filing and, therefore, notified Kehuaxing that the filing would be rejected as untimely and removed from the administrative record pursuant to 19 CFR 351.301(c)(2).⁵

On May 29, 2012, Kehuaxing provided a timely filed separate rate application (“SRA”). However, on June 6, 2012, the Department notified Kehuaxing that it was rejecting this SRA, consistent with the policy and instructions clearly laid out in the *Initiation Notice* and the March 22, 2012, Q&V questionnaire.⁶ Accordingly, the Department denied Kehuaxing a separate rate in the *Preliminary Determination*.⁷

For the *Final Determination*, the Department continued to find Kehuaxing’s Q&V response untimely and declined to reconsider the rejected responses, noting that adherence to the Department’s administrative deadlines is necessary for the Department to provide all interested parties with a reasonable timeframe in which to submit information and to complete the investigation within the statutory deadline specified in section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the “Act”), as well as assure impartiality in its procedures.⁸

Summary of Remand Order

On May 5, 2014, the CIT held that the Department abused its discretion and remanded the Department’s decision to assign Kehuaxing the PRC-wide rate. Specifically, the Court found that the deadline for filing Q&V responses was not mandated by either the statute or governing regulations, and that the Department’s rejection of a timely separate rate response (and resulting

⁵ See the Department’s letter to Kehuaxing entitled, “Investigation of Drawn Stainless Steel Sinks from the People’s Republic of China: Rejection of Submission,” dated April 20, 2012. The business proprietary and public versions of the Q&V documents were subsequently removed from the record.

⁶ See the Department’s letter to Kehuaxing entitled, “Antidumping Duty Investigation of Drawn Stainless Steel Sinks from the People’s Republic of China: Rejecting Shenzhen Kehuaxing Industrial Ltd.’s Separate Rate Application,” dated June 6, 2012. The business proprietary and public versions of the separate rate application were officially removed from the record pursuant to a June 6, 2012, memorandum to the File entitled, “Rejecting Shenzhen Kehuaxing Industrial Ltd.’s Separate Rate Application.”

⁷ See *Drawn Stainless Steel Sinks From the People’s Republic of China: Antidumping Duty Investigation*, 77 FR 60673 (October 4, 2012) (“*Preliminary Determination*”) and accompanying Decision Memorandum, at 11-12.

⁸ See *Final Determination*, and accompanying Issues and Decision Memorandum at Comment 14.

application of the PRC-rate) amounted to an impermissibly severe consequence to a “relatively minor compliance failure.”⁹ The Court also held that the Department’s reliance on the administrative burden of accepting late submissions, impartiality, and parties’ potential manipulation of the record were unpersuasive given the facts of the case, since the acceptance of a submission due at the close of business on one day but filed prior to the opening of business on the following would have provided no undue administrative burden to the Department or afforded unfair advantage to Kehuaxing.¹⁰ Finally, the Court found that the Department’s language regarding extensions in its requests for Q&V and separate rate information was inconsistent with the language contained in the *Initiation Notice* with respect to the relevant deadlines and the severity of consequences for failing to meet those deadlines, and that the resulting ambiguity undermined the Department’s strict approach.¹¹

Therefore, the Court reversed the Department’s decision to assign Kehuaxing the PRC-wide rate and instructed the Department to act “expeditiously” in complying with the remand because cash deposits are being collected.¹² The Court also held that Department may not individually investigate Kehuaxing, absent an explanation as to why doing so would be feasible.¹³

Request for Information

On May 13, 2014, the Department requested that Kehuaxing re-submit the previously rejected Q&V and SRA documents.¹⁴ Kehuaxing complied with this request and timely

⁹ See *Remand Order* at 10-24.

¹⁰ *Id.*

¹¹ *Id.* at 21-23.

¹² *Id.* at 24 and 25-26.

¹³ *Id.* at 24-25.

¹⁴ See the Department’s letter to Kehuaxing entitled, “Remand Redetermination Concerning the Antidumping Duty Investigation on Drawn Stainless Steel Sinks from the People’s Republic of China: Reopening of the Record for Submission of Kehuaxing Industrial Ltd.’s Quantity and Value Response and Separate Rate Application,” dated May 13, 2014.

submitted the requested information to the record.¹⁵ As such, the record now contains the requisite information to determine Kehuaxing's eligibility for a separate rate. The Department provides the appropriate separate rate analysis, below, in accordance with the *Remand Order*.

C. Analysis

As an initial matter, we do not disagree with the Court that it is not feasible to individually investigate Kehuaxing at this time. Accordingly, we have, under respectful protest,¹⁶ evaluated Kehuaxing's eligibility for separate rate status in accordance with our standard methodology, as follows:

Separate Rates Analysis

In proceedings involving NME countries, the Department maintains a rebuttable presumption that all companies within the country are subject to government control and, therefore, should be assessed a single weighted-average dumping margin.¹⁷ The Department's policy is to assign all exporters of merchandise under consideration that are in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.¹⁸ The Department analyzes whether each entity exporting the merchandise under consideration is sufficiently independent under a test established in

¹⁵ See Kehuaxing's submission entitled, "Resubmitted Quantity and Value Response of Shenzhen Kehuaxing Industrial Ltd.: Drawn Stainless Steel Sinks from China," dated May 15, 2014 ("Kehuaxing's Remand Q&V Submission") and Kehuaxing's submission entitled, "Resubmitted Separate Rate Application of Shenzhen Kehuaxing Industrial Ltd.: Drawn Stainless Steel Sinks from China," dated May 15, 2014 ("Kehuaxing's Remand SRA Submission").

¹⁶ The Department protests the Court's decision regarding its exercise of discretion in this case. The Department continues to believe that strict enforcement of its administrative deadlines is necessary to its ability to administer the statute and to protect parties that conform to the Department's instructions, especially when weighed against the relatively low burden the Department imposes upon parties to submit extension requests prior to the date of a pre-established deadline.

¹⁷ See, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039, 55040 (September 24, 2008).

¹⁸ See *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588, 20589 (May 6, 1991) ("Sparklers").

*Sparklers*¹⁹ and further developed in *Silicon Carbide*.²⁰ According to this separate rate test, the Department will assign a separate rate in NME proceedings if a respondent can demonstrate the absence of both *de jure* and *de facto* government control over its export activities. If, however, the Department determines that a company is wholly foreign owned, then a separate rate analysis is not necessary to determine whether that company is independent from government control and eligible for a separate rate.

1) *Ownership*

Kehuaxing provided evidence that it is a wholly Chinese-owned company.²¹ Therefore, the Department analyzes whether KeHuaxing provides sufficient evidence to demonstrate an absence of *de jure* and *de facto* government control over its export activities.

2) *Control*

A) Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) legislative enactments decentralizing control over export activities of the companies; and (3) other formal measures by the government decentralizing control over export activities of companies.²²

The evidence provided by KeHuaxing supports a finding of an absence of *de jure* government control based on the following: (1) an absence of restrictive stipulations associated with the individual exporters' business and export licenses; (2) the existence of applicable

¹⁹ *Id.*

²⁰ See Notice of Final Determination of Sales at Less Than Fair Value: *Silicon Carbide From the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*").

²¹ See KeHuaxing's Remand SRA Submission at Exhibit III.

²² See *Sparklers*, 56 FR at 20589.

legislative enactments decentralizing control of the companies; and (3) the implementation of formal measures by the government decentralizing control of Chinese companies.²³

B) Absence of *De Facto* Control

Typically, the Department considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) whether the export prices (“EP”) are set by, or are subject to the approval of, a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.²⁴ The Department determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates.

The evidence provided by Kehuaxing supports a finding of an absence of *de facto* government control based on record statements and supporting documentation showing that the company: (1) sets its own EPs independent of the government and without the approval of a government authority; (2) has the authority to negotiate and sign contracts and other agreements; (3) maintains autonomy from the government in making decisions regarding the selection of management; and (4) retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.²⁵

Therefore, the evidence placed on the record of this investigation by Kehuaxing demonstrates an absence of *de jure* and *de facto* government control under the criteria identified

²³ See Kehuaxing’s Remand SRA Submission at 8-12 and Exhibits III and IV.

²⁴ See *Silicon Carbide*, 60 FR at 22545.

²⁵ See Kehuaxing’s Remand SRA Submission at 12-22 and Exhibits V-XI.

in *Sparklers and Silicon Carbide*. Accordingly, the Department grants a separate rate to Kehuaxing.

Margin for Kehuaxing

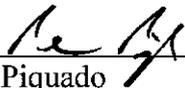
Normally, the Department's practice is to assign to separate rate entities that were not individually examined a rate equal to the average of the rates calculated for the individually examined respondents, excluding any rates that are zero, *de minimis*, or based entirely on adverse facts available ("AFA").²⁶ In the underlying investigation, both individually examined respondents received estimated weighted-average AD margins above *de minimis* and not based on total AFA. Because there were only two individually examined respondents in the underlying investigation, use of the weighted-average of these two margins risked disclosure of business proprietary information. Therefore, the Department instead calculated the separate rate margin using a simple average of the two final AD margins calculated for the mandatory respondents, resulting in an antidumping duty margin of 33.51 percent for entities that demonstrated eligibility for a separate rate.²⁷ As discussed above, Kehuaxing demonstrated eligibility for this rate.

²⁶ See, e.g., *Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 71 FR 77373, 77377 (December 26, 2006), unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007).

²⁷ See *Final Determination*, 78 FR at 13021.

FINAL RESULTS OF REDETERMINATION

Pursuant to the *Remand Order* and as a result of the above analysis, we now consider Kehuaxing to be eligible for the final antidumping duty separate rate margin of 33.51 percent. Accordingly, we will notify Customs and Border Protection (“CBP”) of Kehuaxing’s revised cash deposit rate at the completion of this litigation proceeding.



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

4 JUNE 2014
Date