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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-863]

Honey from the People's Republic of China: Notice of Court Decision Not in Harmony with Final Results of Review and Notice of Amended Final Results of Review Pursuant to Court Decision

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (the Department) is notifying the public that the Court of International Trade's (CIT's or the Court's) final judgment in this case is not in harmony with the Department's final results of review and is, therefore, amending the final dumping duty margin for one reviewed company.

EFFECTIVE DATE: June 10, 2017

FOR FURTHER INFORMATION CONTACT: John Drury, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0195.

SUPPLEMENTARY INFORMATION:

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 People's Republic of China (PRC).<sup>1</sup> As part of the Department's amended final determination, the Department

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<sup>1</sup> 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*).

made affirmative critical circumstances determinations for 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), and certain other firms.<sup>2</sup>

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.<sup>3</sup> 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.

On May 5, 2004, the Department published the *Final Results*.<sup>4</sup> On June 10, 2004, the Department published the *Amended Final Results*, which corrected certain ministerial errors.<sup>5</sup> In the *Amended Final Results*, the Department corrected the antidumping duty margin for respondent Zhejiang from 68.35 percent to 67.70 percent *ad valorem*.

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 that were not included in the original record,<sup>6</sup> but were identified as part of a Freedom of Information Act (FOIA) request filed by Zhejiang.

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<sup>2</sup> *Id.*, at 63672.

<sup>3</sup> See *Initiation of Antidumping and Countervailing Administrative Review and Requests for Revocation in Part*, 68 FR 3009 (January 22, 2003) (*Initiation Notice*).

<sup>4</sup> 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*).

<sup>5</sup> See *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*).

<sup>6</sup> See Letter to All Interested Parties, dated October 21, 2015, at Attachment I, citing to Amended Public Record 121-131, Ct. No. 04-268; see also *Amendment to Administrative Record in Zhejiang Native Produce and Animal By-Products Import and Export Corp v United States*, Court No 04-00268, dated November 19, 2004.

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.<sup>7</sup> 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.<sup>8</sup>

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.

The Department released a draft redetermination on December 31, 2015, and invited comments from parties.<sup>9</sup> The Department released a final redetermination on February 10, 2016.<sup>10</sup> In the Final Redetermination, consistent with the Court's instructions and after a review of information on the record and comments from interested parties, the Department found that a change in the surrogate value for raw honey was not warranted and that a change in the financial statements for calculating surrogate values for factory overhead, selling, general and administrative expenses, and profit, was also not warranted. In addition, the Department

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<sup>7</sup> See *Zhejiang Native Produce & Animal By-Products Import & Export Corp. v. United States*, Court No. 02-00057, 25 ITRD (BNA) 2394 (CIT November 21, 2003); 26 ITRD (BNA) 2320 (CIT August 26, 2004).

<sup>8</sup> See *Zhejiang Native Produce & Animal By-Products Import & Export Corp. v. United States*, 2013 WL 2996235, Slip Op. 13-76 (CIT 2013).

<sup>9</sup> See Letter to All Interested Parties, dated December 31, 2015 (Draft Redetermination).

<sup>10</sup> See *Zhejiang Native Produce & Animal By-Products Import & Export Corp. v. United States*, Court No. 04-00268, dated February 10, 2016 (Final Redetermination).

removed sales corresponding to the critical circumstances period and recalculated the antidumping duty margin. Specifically, the Department calculated a margin of 67.06 percent *ad valorem* for Zhejiang's sales of honey from the PRC for the period of May 11, 2001, to November 30, 2002.<sup>11</sup>

On June 1, 2017, the CIT sustained the Department's Final Redetermination in its entirety.<sup>12</sup>

#### Timken Notice

In its decision in *Timken*,<sup>13</sup> as clarified by *Diamond Sawblades*,<sup>14</sup> the United States Court of Appeals for the Federal Circuit (CAFC) held that, pursuant to sections 516A(c) and (e) of the Act, the Department must publish a notice of a court decision that is not "in harmony" with a Department determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's June 1, 2017, judgment in *Zhejiang III*, sustaining the Department's decision in the Final Redetermination to re-calculate the dumping margin for Zhejiang from 67.70 percent to 67.06 percent, constitutes a final decision of the court that is not in harmony with the *Amended Final Results*. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, the Department will issue liquidation instructions to U.S. Customs and Border Protection (CBP) to liquidate entries of honey from the PRC exported to or imported into the United States by Zhejiang at the rate of 67.06 percent *ad valorem* pending expiration of the period to appeal or, if appealed, pending a final and conclusive court decision.

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<sup>11</sup> See Final Redetermination at 29-30

<sup>12</sup> See *Zhejiang Native Produce & Animal By-Products Import & Export Corp. v. United States*, Court No. 04-00268, dated June 1, 2017 (*Zhejiang III*).

<sup>13</sup> See *Timken Co. v. United States*, 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

<sup>14</sup> See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

Second Amended Final Results

Because there is now a final court decision, the Department amends the *Amended Final Results* with respect to the dumping margin of Zhejiang. The revised weighted-average dumping margin for Zhejiang during the period May 11, 2001, to November 30, 2002, is as follows:

Exporter	Weighted-Average Dumping Margin (Percent)
Zhejiang Native Produce & Animal By-Products Import & Export Corp.	67.06

In the event the Court’s ruling is not appealed, or if appealed and upheld by the CAFC, the Department will instruct CBP to assess antidumping duties on entries of the subject merchandise exported by Zhejiang using the revised assessment rate calculated by the Department in the *Final Redetermination*.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

*Dated: June 23, 2017.*

Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance

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