Slip Op. 05–140

BEFORE: SENIOR JUDGE NICHOLAS TSOUCALAS

FAG ITALIA, S.p.A., FAG BEARINGS CORP., SKF USA Inc. and SKF INDUSTRIE S.p.A., Plaintiffs and Defendant-Intervenors, v. UNITED STATES, Defendant, and THE TORRINGTON COMPANY, Defendant-Intervenor and Plaintiff.

Consol. Court No.
97–00260–S

Judgment

This matter comes before the Court pursuant to the decision of the Court of Appeals for the Federal Circuit ("CAFC") in *FAG Italia v. United States*, 402 F.3d 1356 (Fed. Cir. 2005) and the CAFC's mandate of May 31, 2005, reversing and remanding the judgment of the Court in *FAG Italia v. United States*, 24 CIT 1311 (2000) and *FAG Italia v. United States*, 25 CIT 1038 (2001) (affirming remand results submitted pursuant to *FAG Italia*, 24 CIT 1311).[1] Based on the CAFC's decision, the Court remanded this matter to the United States Department of Commerce ("Commerce"). Commerce was instructed to allow FAG Italia, S.p.A. ("FAG Italia") an opportunity to demonstrate that its antidumping duty margin was incorrectly determined because Commerce's use of actual expenses did not account for United States credit and inventory carrying costs in the calculation of total expenses. *See* Order (July 6, 2005). Commerce filed its *Final Results of Redetermination Pursuant to Court Remands* ("*Remand Results*") on October 5, 2005. Pursuant to the Court's remand, Commerce invited FAG Italia to show that its dumping margin had been incorrectly determined. *See Remand Results* at 3. Commerce's invitation. FAG Italia, however, failed to respond to *See id.* at 3–4.

[1] The Torrington Company was acquired by the Timken Company in 2003, and is now known as Timken U.S. Corporation.

Commerce determined that it had properly calculated FAG Italia's antidumping duty margin and did not change the previously assigned margin. *See id.* at 4–5. FAG Italia's weighted-average percentage margin for the period of May 1, 1994, through April 30, 1995, is 4.12 percent for ball bearings and parts thereof.

This Court, having received and reviewed Commerce's *Remand Results*, holds that Commerce duly complied with the Court's remand order and it is hereby

ORDERED that Commerce's *Remand Results* are reasonable, supported by substantial evidence, and is otherwise in accordance with law; and it is further

ORDERED that the *Remand Results* filed by Commerce on October 5, 2005, are affirmed in their entirety; and it is further

ORDERED that since all other issues have been decided, this case is dismissed.

Slip Op. 05–141

BEFORE: SENIOR JUDGE NICHOLAS TSOUCALAS

NTN BEARING CORPORATION OF AMERICA and NTN KUGELLAGERFABRIK (DEUTSCHLAND) GmbH; SKF USA INC. and SKF GmbH; FAG KUGELFISCHER GEORG SCHAFER AG and FAG BEARINGS CORPORATION, Plaintiffs and Defendant-Intervenors, and INA WALZLAGER SCHAEFFLER oHG and INA BEARING COMPANY, INC., Plaintiffs, v. UNITED STATES, Defendant, and THE TORRINGTON COMPANY, Defendant-Intervenor and Plaintiff.

Consol. Court No. 97–01800

Judgment

This matter comes before the Court pursuant to the decision of the Court of Appeals for the Federal Circuit ("CAFC") in *NTN Bearing Corp. Am. v. United States*, 402 F.3d 1356 (Fed. Cir. 2005) and the CAFC's mandate of May 31, 2005, reversing and remanding the judgment of the Court in *NTN Bearing Corp. Am. v. United States*, 25 CIT 664, 155 F. Supp. 2d 715 (2001) and *NTN Bearing Corp. Am. v. United States*, 25 CIT 1274 (affirming remand results submitted pursuant to *NTN Bearing Corp. Am.*, 25 CIT 664, 155 F. Supp. 2d 715).[1] Based on the CAFC's decision, the Court remanded this mat-

[1] The Torrington Company was acquired by the Timken Company in 2003, and is now known as Timken U.S. Corporation. INA Walzlager Schaeffler oHG is now known as INA

ter to the United States Department of Commerce ("Commerce"). Commerce was instructed to allow INA Walzlager Schaeffler oHG and INA Bearing Company, Inc. (collectively "INA") an opportunity to demonstrate that their antidumping duty margins were incorrectly determined because Commerce's use of actual expenses did not account for United States credit and inventory carrying costs in the calculation of total expenses. *See* Order (July 7, 2005). Commerce filed its *Final Results of Redetermination Pursuant to Court Remands* ("*Remand Results*") on October 5, 2005. Pursuant to the Court's remand, Commerce invited INA to show that their dumping margins had been incorrectly determined. *See Remand Results* at 3. INA, however, failed to respond to Commerce's invitation. *See id.* at 3–4.

Commerce determined INA's antidumping duty margins, some which differed slightly from previously determined margins in response to earlier remands from the Court. *See id.* at 4–5. Accordingly, INA's weighted-average percentage margins for the period of May 1, 1994, through April 30, 1995, is 19.43 percent for ball bearings and parts thereof and 18.31 percent for cylindrical roller bearings and parts thereof. INA's weighted-average percentage margins for the period of May 1, 1995, through April 30, 1996, is 44.53 percent for ball bearings and parts thereof, 20.09 percent for cylindrical roller bearings and parts thereof and 28.62 percent for spherical roller bearings and parts thereof.

This Court, having received and reviewed Commerce's *Remand Results*, holds that Commerce duly complied with the Court's remand order and it is hereby

ORDERED that Commerce's *Remand Results* are reasonable, supported by substantial evidence, and is otherwise in accordance with law; and it is further Consol.

ORDERED that the *Remand Results* filed by Commerce on October 5, 2005, are affirmed in their entirety; and it is further

ORDERED that since all other issues have been decided, this case is dismissed.

Walzlager Schaeffler HG and INA Bearing Company, Inc. is now known as INA USA Corporation.

SLIP OP. 05–142

WUHAN BEE HEALTHY CO., LTD., Plaintiff, v. UNITED STATES, Defendant, and SIOUX HONEY ASSOC. and AMERICAN HONEY PRODUCERS ASSOC., Def.–Intervenors.

Before: Richard K. Eaton, Judge
Court No. 03–00806

MEMORANDUM OPINION

[Commerce's Final Results of Redetermination Pursuant to Remand affirmed]

Dated: November 2, 2005

Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt LLP (*Mark E. Pardo, Adam M. Dambrov,* and *Paul G. Figueroa*) for plaintiff.

Peter D. Keisler, Assistant Attorney General, Civil Division, United States Department of Justice; *David M. Cohen*, Director, Commercial Litigation Branch, Civil Division, United States Department of Justice; *Jeanne E. Davidson*, Deputy Director, Commercial Litigation Branch, Civil Division, United States Department of Justice (*David S. Silverbrand*) for defendant.

Collier Shannon Scott, PLLC (*Michael J. Coursey*) for defendant–intervenors.

Eaton, Judge: On June 10, 2005, the court remanded to the United States Department of Commerce ("Commerce" or the "Department") its determination regarding coal prices in Honey from the People's Republic of China, 68 Fed. Reg. 62,053 (ITA Oct. 31, 2003) (final results) ("Final Determination"). *See Wuhan Bee Healthy Co., Ltd. v. United States*, 29 CIT ___ , 374 F. Supp. 2d 1299 (2005) ("*Wuhan I*"). On September 7, 2005, Commerce timely released its Final Results of Redetermination Pursuant to Remand ("Remand Results"). The court has jurisdiction pursuant to 28 U.S.C. § 1581(c) (2000) and 19 U.S.C. § 1516a(a)(2)(B)(iii) (2000). For the reasons set forth below, the court affirms Commerce's Remand Results.

STANDARD OF REVIEW

The court "shall hold unlawful any determination, finding, or conclusion found . . . to be unsupported by substantial evidence on the record, or otherwise not in accordance with law. . . ." 19 U.S.C. § 1515a(b)(1)(B)(i). "Substantial evidence is 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.' " *Huaiyin Foreign Trade Corp. (30) v. United States*, 322 F.3d 1369, 1374 (Fed. Cir. 2003) (quoting *Consol. Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)). The existence of substantial evidence is determined "by considering the record as a whole, including evidence that supports as well as evidence that 'fairly detracts from the substantiality of the evidence.' " *Id.* (citing *Atl. Sugar, Ltd. v. United States*, 744 F.2d 1556, 1562 (Fed. Cir. 1984)). "As long as the agency's methodology and procedures are reasonable means of effectuating

the statutory purpose, and there is substantial evidence in the record supporting the agency's conclusions, the court will not impose its own views as to the sufficiency of the agency's investigation or question the agency's methodology." *Ceramica Regiomontana, S.A. v. United States*, 10 CIT 399, 404–05, 636 F. Supp. 961, 966 (1986), *aff'd* 810 F.2d 1137 (Fed. Cir. 1987) (citing *Chevron U.S.A. Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843 (1984); *Abbott v. Donovan*, 6 CIT 92, 97, 570 F. Supp. 41, 47 (1983)).

DISCUSSION

In its Final Determination, Commerce valued coal using Indian import values published in the Monthly Statistics of the Foreign Trade of India ("MSFTI"), which included international freight charges for shipping the coal to India. *See Wuhan I*, 29 CIT at ___, 374 F. Supp. 2d at 1309–10. Plaintiff Wuhan Bee Healthy Co., Ltd. ("Wuhan") argued that Commerce should have used domestic Indian coal prices, which are published in the TERI Energy Data Directory and Yearbook for 2000/2001 ("Teri Data"). *See id.* at ___, 374 F. Supp. 2d at 1310. Commerce maintained that it specifically considered but rejected the Teri Data because it was "derived from a single producer in India, CIL [Coal India Ltd.]." *Id.* (internal citation omitted). In other words, Commerce rejected the Teri Data for valuing coal because it believed the data was unrepresentative of a country–wide price.

After reviewing the parties' arguments, the Court in Wuhan I found that

> Commerce determined that the MSFTI data was the best available information to value coal because "it is quality, country–wide data specific to steam coal prices imported into India during the [period of review], and is representative of competitive market prices." Yet, there is no reason given as to why imported coal provides the best surrogate value. In addition, it appears that Wuhan is correct that many regions of India are represented in the Teri Data. Thus, Commerce has not demonstrated that the value used is the best available information or that the Teri Data is unrepresentative of competitive market prices throughout India.

Id. at ___, 374 F. Supp. 2d at 1310–11 (internal citation omitted). On remand, the Court directed Commerce to provide an explanation that reasonably supported its decision to use import prices instead of domestic prices. *Id.* at 1311 (citing *Hebei Metals & Minerals Import & Export Corp. v. United States*, 29 CIT ___, 366 F. Supp. 2d 1264, 1266 (2005)(ordering Commerce to either "adhere to its conditional preference for domestic surrogate data or . . . state that it is deviating from this practice and provide a rational explanation for doing so.")).

In its Remand Results,[1] Commerce explains that it conducted independent research for its Final Results of Redetermination Pursuant to Remand for Hebei Metals & Minerals Import & Export Corp. v. United States ("Hebei Metals Remand"), which it issued on July 20, 2005. Based on the results of that research, Commerce determined that "the TERI data are the best data available for valuing the coal input for purposes of Wuhan's new shipper review." Remand Results at 7. Commerce explains that the Teri Data

> states that the prices in its database are obtained directly from Coal India Limited, which produces more than 80 percent of India's coal. TERI further states that the prices represent coal prices from Coal India Limited's eight subsidiaries located throughout India. Although the Department has some concerns about the monopolistic structure of the coal industry in India, the Department determines that the TERI steam coal pricing data are the best quality data because not only are they published, publicly–available data, but also because they are representative of the coal industry throughout India. Thus, the TERI data, as they are currently presented, are credible as a country–wide source of data.

Id. at 8–9. Commerce found the steam coal values listed in the Teri Data to be specific, as they are derived from actual sale prices of steam coal in India, and it adjusted for inflation where the Teri Data values were not contemporaneous with the period of review.

Having reviewed Commerce's research and its reasons for selecting the Teri Data as the best source of data for valuing coal, the court finds that Commerce has complied with the court's remand instructions and that its determination is supported by substantial evidence and is otherwise in accordance with law.

CONCLUSION

For the foregoing reasons, Commerce's Remand Results are affirmed. Judgment shall be entered accordingly.

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[1] It should be noted that Wuhan declined to file comments on the Remand Results because the only issue addressed therein, valuation of coal, was resolved to its satisfaction.