

Trade Court Orders Commerce Redo Of Brazilian Honey Duties

By **Rae Ann Varona**

Law360 (May 31, 2024, 7:15 PM EDT) -- The U.S. Court of International Trade ordered the U.S. Department of Commerce to reconsider substituting certain facts for information the department said a Brazilian honey producer withheld, saying the producer did provide the requested information.

In ruling on a motion for judgment filed by Brazilian honey maker and exporter Supermel, CIT Judge Timothy C. Stanceu said Supermel provided Commerce, along with data for its raw honey processing costs, a complete database of all raw honey and beeswax purchases it made from beekeepers, total values for those purchases and a breakdown of costs.

But Commerce still concluded that Supermen withheld information, impeded the department's anti-dumping duty investigation and provided unverifiable information, the judge said.

"Based on its own examination of the questionnaire responses and included exhibits, the court concludes that these findings are not supported by substantial evidence on the record of the anti-dumping duty investigation," Judge Stanceu said in an opinion and order Thursday.

He said information Commerce found to have been withheld was "provided in full by a complete set of journal entries of raw honey purchases from the beekeepers and the related responses disclosing the placement of all of the recorded costs" in a cost account maintained in a company accounting system.

Commerce issued a final determination in April 2022, concluding that raw honey imports from Brazil were being sold or likely to be sold in the U.S. at unfairly low prices. It also concluded that Supermel — the trade name for Apiário Diamante Comercial Exportadora Ltda. and Apiário Diamante Produção e Comercial de Mel Ltda. — withheld information and impeded the department's dumping probe by failing to respond to various questionnaires with certain information needed for Commerce to verify production cost data the department previously used in calculating an amended preliminary estimated dumping margin.

Commerce thus assigned Supermel an estimated dumping margin of 83.72% — a jump from a preliminary margin of 29.61%, later reduced to 10.52%.

The U.S. International Trade Commission voted unanimously in May 2022 that honey imports from Brazil, Argentina, India and Vietnam were hurting U.S. domestic honey producers. Commerce thereafter issued an anti-dumping order placing levies on raw honey from the producers and exporters from the four countries, including Supermel.

Supermel, which was a mandatory respondent in Commerce's investigation, sued Commerce in July 2022, saying it acted to the best of its ability by providing requested information.

It said that when Commerce asked for documentation that corroborated the quantity and value of honey Supermel bought from beekeepers, it handed over journal entries it maintained in its recordkeeping system for honey purchases, the complete reconciliation between the journal entries and the company's financial statements and sample invoices beekeepers signed to show the delivery and payment for the purchased honey.

Supermel said it was unlawful for Commerce in concluding that Supermel failed to provide requested documents to then use documents collected from the independent beekeepers to verify Supermel's data.

The honey producer then moved for judgment on the agency record in December 2022, saying discrepancies Commerce alleged between the company's honey purchases and beekeeper tax invoices did not constitute a lawful basis for applying adverse facts available to the company. The alleged discrepancies didn't indicate any gap in the cost information it submitted, nor did they indicate its failure to provide requested information or fully cooperate in the probe, it said.

Supermel also said Commerce acted unlawfully in stating that beekeepers are on notice that they will be required to submit accurate cost information fully supported by evidence and verifiable and that failure to do so could result in adverse facts being applied.

Judge Stanceu on Thursday found Supermel's objection to the statement understandable but said Supermel's claim ultimately wasn't directed to any injury alleged resulting from Commerce's challenged finding but to a potential finding of a future determination.

"In seeking a remedy for future harm, Supermel in effect is asking the court for an advisory opinion that the court cannot provide," Judge Stanceu said.

Pierce Lee of Crowell & Moring LLP, an attorney for Supermel, told Law360 on Friday that they are "pleased with the court's decision and grateful for Judge Stanceu's thorough review of the record evidence in assessing our arguments in this proceeding."

"It is reassuring that the court acknowledged the potential imperfections in data from small family-run beekeeping operations, emphasizing that minor discrepancies should not invalidate a respondent's data," Lee said.

A representative for the U.S. Department of Commerce did not immediately respond to a request for comment Friday.

Supermel is represented by Daniel J. Cannistra and Pierce Jungwoon Lee of Crowell & Moring LLP.

The government is represented by Kara Marie Westercamp of the Commercial Litigation Branch of the U.S. Department of Justice's Civil Division and Benjamin W. Juvelier, Jesus Nieves Saenz and William Mitchell Purdy of the U.S. Department of Commerce's Office of Chief Counsel for Trade Enforcement and Compliance.

The case is Apiario Diamante Comercial Exportadora Ltda. et al. v. United States, case number 1:22-cv-00185, in the U.S. Court of International Trade.

--Editing by Stephen Berg.

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