

September 27, 2006

**MEMORANDUM TO:** James C. Leonard, III  
Acting Assistant Secretary  
for Import Administration

**FROM:** Stephen J. Claeys  
Deputy Assistant Secretary  
for Import Administration

**SUBJECT:** Issues and Decision Memorandum for the Final Results of the  
2004-2005 New Shipper Reviews of Honey from the People's  
Republic of China

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**SUMMARY:**

We have analyzed the briefs and rebuttal brief of interested parties in the 2004/2005 new shipper reviews of honey from the People's Republic of China (PRC). As a result of our analysis, we have made no changes from the preliminary results. *See Honey from the People's Republic of China: Intent to Rescind and Preliminary Results of Antidumping Duty New Shipper Reviews*, 71 FR 32923 (June 7, 2006) (NSR7 Preliminary Results). We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is the complete list of the issues in these new shipper reviews:

**Comments from the Preliminary Results**

**Company-Specific Issues**

Wuhan Shino-Food-Related Issues

- Comment 1: Rescission of Shino-Food
- Comment 1a: Price & Quantity
- Comment 1b: Payment of Freight and Antidumping Duty Expenses
- Comment 1c: Other *Indicia* of Non-*Bona Fides* Sale

Shanghai Taiside-Related Issues

- Comment 2: Appropriate Surrogate Value for Bottles & Caps
- Comment 3: Appropriate Surrogate Value for Honey

## **Background**

We published the preliminary results in the 2004-2005 new shipper reviews in the *Federal Register* on June 7, 2006. See *NSR7 Preliminary Results*. The period of review (POR) is December 1, 2004, through May 31, 2005. We received one case brief each from respondent Wuhan Shino-Food Trade Co., Ltd. (Shino-Food) and Shanghai Taiside Trading Co., Ltd. (Taiside), on August 4, 2006,<sup>1</sup> and July 28, 2006, respectively. See “Honey From the People’s Republic of China: Shino-Food Case Brief,” dated August 4, 2006 (Shino-Food Brief) and “Honey From the People’s Republic of China: Taiside Case Brief,” dated July 28, 2006 (Taiside Brief), respectively. We received a rebuttal brief from the American Honey Producers Association and the Sioux Honey Association (collectively, petitioners), on August 3, 2006. See “Honey From the People’s Republic of China: Petitioners’ Rebuttal Brief,” dated August 3, 2006 (Petitioners Rebuttal Brief).

Based on the determinations below, we have made no revisions to the data for these final results. For details on Taiside’s margin calculation, please see the Taiside Final Analysis Memorandum, dated September 27, 2006, which is on file in Import Administration’s Central Records Unit, room B-099 of the Department of Commerce building.

## **DISCUSSION OF THE ISSUES:**

### **Shino-Food-Related Issue**

#### **Comment 1: Rescission of Shino-Food**

Shino-Food argues that the facts on the record establish that its POR sale was indeed *bona fide*. Shino-Food cites numerous court cases to support its position that the Department’s authority to exclude sales as not *bona fide* is limited to “exceptional circumstances when those sales are unrepresentative and extremely distortive”; that the “totality of circumstances” test used to determine a sale is unrepresentative focuses on whether the transaction is “commercially reasonable” or “atypical of normal business practice”; and that the Department must explain how its factual findings support its determination. See Shino-Food Brief at 2-3. Shino-Food claims that nothing in the Department’s analysis of the *bona fides* of Shino-Food’s POR sale in the *NSR7 Preliminary Results*<sup>2</sup> would lead a reasonable person to conclude that Shino-Food’s POR sale was not *bona fide*. Therefore, Shino-Food argues that the Department’s preliminary decision to rescind should be set aside and the Department should proceed with the new shipper review. See Shino-Food Brief at 28.

Petitioners argue that the Department’s *bona fides* analysis, as listed in the SF *Bona Fides* Analysis Memo, was detailed, in accordance with law, and supported by substantial evidence. See Petitioners Rebuttal Brief at 13-14. Petitioners claim that the Department made clear

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<sup>1</sup> On July 28, 2006, we received a case brief from Shino-Food, which we subsequently rejected as containing new information. On August 4, 2006, Shino-Food re-filed its brief, per the Department’s instructions, without the new information.

<sup>2</sup> See “Memorandum to James C. Doyle, Office Director: *Bona Fides* Analysis and Intent to Rescind New Shipper Review of Honey from the People’s Republic of China for Wuhan Shino-Food Trade Co., Ltd.,” dated May 30, 2006 (SF *Bona Fides* Analysis Memo).

through its *bona fides* analysis that it did not rely on a single factor to support its determination, but rather examined the totality of the circumstances surrounding the POR sale and Shino-Food's business practices. According to petitioners, the analysis of all of the factors the Department cited left the Department with no choice but to rescind the new shipper review with regard to Shino-Food because the Department determined the POR sale was not *bona fide*. See Petitioner Rebuttal Brief at 26-28.

### **Department's Position:**

In evaluating whether or not a single sale in a new shipper review is commercially reasonable, and therefore *bona fide*, the Department considers, *inter alia*, such factors as: (1) the timing of the sale; (2) the price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the transaction was made on an arms-length basis. See *Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246, 1250 (TTPC) (CIT 2005), citing *Am. Silicon Techs. v. United States*, 110 F. Supp. 2d 992, 995 (CIT 2000). Accordingly, the Department considers a number of factors in its *bona fides* analysis, "all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise." See *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1342 (CIT 2005) (*New Donghua*), citing *Fresh Garlic from the PRC: Final Results of Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002), and accompanying Issues and Decision Memorandum (*Clipper NSR*).

Although some *bona fides* issues may share commonalities across various Department cases, the Department examines the *bona fide* nature of a sale on a case-by-case basis, and the analysis may vary with the facts surrounding each sale. See *TTPC*, 366 F. Supp. 2d at 1260, citing *Certain Preserved Mushrooms From the People's Republic of China: Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review*, 68 FR 41304 (July 11, 2003), and accompanying Issues and Decision Memorandum at 20 (*Mushrooms FR*). In *TTPC*, 366 F. Supp. 2d at 1250, the U.S. Court of International Trade (CIT) affirmed the Department's practice of considering that "any factor which indicates that the sale under consideration is not likely to be typical of those which the producer will make in the future is relevant," (*id.*, citing *Windmill Int'l Pte., Ltd. v. United States*, 193 F. Supp. 2d 1303, 1313 (CIT 2002) (*Windmill*)), and that "the weight given to each factor investigated will depend on the circumstances surrounding the sale." *TTPC*, 366 F. Supp. 2d at 1263. The CIT stated that the Department's practice makes clear that the Department is highly likely to examine objective, verifiable factors to ensure that a sale is not being made to circumvent an antidumping duty order. See *New Donghua*, 374 F. Supp. 2d at 1339. Thus, a prospective new shipper is on notice that it is unlikely to establish the *bona fides* of a sale merely by claiming to have sold in a manner representative of its future commercial practice. *Id.*

Because this new shipper review covers a single sale, it is essential that every aspect of that sale indicate that the transaction was reflective of normal commercial realities because this single sale would serve as the basis for Shino-Food's antidumping margin until the next review of the company is completed, which could be in approximately one and a half years or more. Based on our analysis of the totality of the circumstances discussed below in Comments 1a, 1b, and 1c, the

Department determines that the new shipper sale made by Shino-Food was not *bona fide* because 1) the sale price and quantity of Shino-Food's POR sale are significantly different from other shipments from the PRC and Shino-Food's own subsequent sales; 2) the circumstances surrounding Shino-Food's payment of the freight and cash deposit for the new shipper sale are suspect; and 3) other *indicia*, including information concerning Shino-Food's 2006 sales and the fact the Department was unable to tie all of Shino-Food's warehouse withdrawal slips to Shino-Food's 2005 sales and production records at verification. All of these factors lead to the conclusion that the single sale under review was not *bona fide*. Therefore, this sale does not provide a reasonable or reliable basis for calculating an antidumping margin. As this non-*bona fide* sale is Shino-Food's only sale during the POR, we are rescinding this new shipper review.

### **Comment 1a: Price & Quantity**

Shino-Food argues that the Department's determination that Shino-Food's April 25, 2005, sale of honey (POR sale) was not reflective of the company's normal business practices is merely based on a comparison of Shino-Food's POR sale price and sale quantity versus "certain" other sale prices and quantities and not based on any analysis of Shino-Food's normal practices or the industry's normal practices.

Regarding pricing, the Department's analysis, Shino-Food contends, should include an analysis of the market situation at the time. The honey market is subject to significant price fluctuations, Shino-Food claims, and without a review of the market conditions a comparative price analysis is meaningless. The Department's comparisons, Shino-Food argues, of Shino-Food's POR sales price to its subsequent sales prices is misleading because it does not take into account any outside influences that may impact prices in the U.S. honey market. *See* Shino-Food Brief at 3-5. According to Shino-Food, average unit values (AUVs) for honey imports from all countries into the United States dropped 18 percent between April 2005 and August 2005.<sup>3</sup> The price differences that the Department cited for Shino-Food in its analysis of Shino-Food's POR sale, Shino-Food contends, were merely due to changes in market conditions. Shino-Food argues that not adjusting its prices to reflect U.S. market prices after its POR sale would have been an abnormal business practice. The Department's only evidence, Shino-Food argues, that Shino-Food's sale price was not reflective of its normal practices centers around the Department's comparison of Shino-Food's POR sales price to other POR entry prices and Shino-Food's own post-POR sales. These price differences, Shino-Food contends, do not constitute evidence that the price of Shino-Food's POR sale was not reflective of the company's normal pricing practices; rather, Shino-Food argues, they are evidence of the commercial reasonableness of Shino-Food's POR sale. *See* Shino-Food Brief at 5-7.

Shino-Food contends that the comparison the Department made between U.S. Customs and Border Protection (CBP) entry data and Shino-Food's POR sale is not relevant because those data show there were shipments priced higher than Shino-Food's POR sale. Furthermore, CBP data and U.S. International Trade Commission (USITC) Dataweb data cited by the Department in its SF *Bona Fides* Analysis Memo, Shino-Food adds, likely reflect FOB sales terms, while

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<sup>3</sup> Shino-Food notes that while AUVs reflect the prices of entries into the United States, and not necessarily a sale to an unaffiliated customer, nevertheless the AUVs serve as an indicator of general price trends in the U.S. market. *See* Shino-Food Brief at 5.

Shino-Food's sale was based on delivered, duty-paid (DDP) terms. *See* Shino-Food Brief at 7. Therefore, the comparisons are not being made on an "apples-to-apples" basis, Shino-Food claims. The commercial reasonableness of Shino-Food's POR sale, it contends, is evidenced by the market conditions at the time with regard to its sale price and by the fact that an unaffiliated customer in the United States was willing to purchase honey at the price at which Shino-Food sold it during the POR. *See* Shino-Food Brief at 9-10.

Regarding quantity, Shino-Food argues that the quantity of its POR sale was not atypical, because it was obviously not a sample quantity. Shino-Food claims that it understands its POR sale quantity is typical of the industry and that any differences between its POR sale and post-POR sales reflected its customers' specific needs. Furthermore, Shino-Food argues, if Shino-Food had access to proprietary sales data like the Department does, it is certain it would find countless arm's-length sales of honey to unaffiliated customers that involve larger or smaller quantities than Shino-Food's POR sale. Shino-Food concludes that there is no evidence supporting the Department's conclusion that POR sale quantity is atypical; rather, Shino-Food argues, the sale quantity is commercially reasonable and reflects normal business practices tailored to its customers needs. *See* Shino-Food Brief at 11-13.

While Shino-Food acknowledges that the Department must have flexibility to adapt components of its totality of circumstances test, Shino-Food contends that where the Department has established a precedent in its totality of circumstances test, it should articulate its reasons for departing from that precedent. Shino-Food claims that the Department has an established precedent of determining sales of relatively small quantities to be *bona fide*, citing *Fresh Garlic from the People's Republic of China; Notice of Amended Final Results of Antidumping Duty Administrative Review*, 68 FR 11368, 11369 (March 10, 2003) (*Garlic from the PRC*) and *Notice of Final Results of Antidumping Duty New Shipper Review: Freshwater Crawfish Tail Meat From the People's Republic of China*, 68 FR 43085 (July 21, 2003) (*Zhenyu Crawfish NSR*). The Department, according to Shino-Food, failed to explain its departure from accepting small sale quantities as *bona fide* sales and should explain why it departed from its precedent in the present case. Otherwise, Shino-Food argues, the Department's determination regarding Shino-Food appears arbitrary. Shino-Food contends that, to the extent that the Department's *bona fide* analysis with respect to Shino-Food's sale quantity led the Department to determine the sale was not *bona fide*, the Department's determinations in this matter should be set aside. *See* Shino-Food Brief at 19-21.

In addition, regarding both price and quantity, Shino-Food argues that the CBP prices and Dataweb prices reflect entry prices and quantities, not actual sales. Shino-Food suggests that entries represent nothing more than transfer prices or transfer quantities between exporters and affiliated U.S. importers, which may then be marked up, in terms of prices, or broken up, in terms of quantity, for the actual sale. Therefore, Shino-Food claims, entries cannot be used in determining whether a sale is *bona fide* because the appropriate comparison would be an arm's-length sale to an unaffiliated customer. Again, the comparisons are not being made on an "apples-to-apples" basis, Shino-Food argues. Neither source of data, Shino-Food contends, constitutes evidence that Shino-Food's POR sale was not reflective of its normal business practices. *See* Shino-Food Brief at 7-9 and 10-11.

Next, Shino-Food cites numerous court cases and contends that the Department must avoid vague or arbitrary application of its own rules, articulate its analysis in a detailed manner such that it is clear that the Department's conclusions are rational and based on relevant facts, and give parties an opportunity to understand its analyses and conclusions and not be so abstract or obscure that reasonable persons will have to guess at how the Department's rules will be applied in subsequent cases. *See* Shino-Food Brief at 13-15.

Shino-Food argues that in the SF *Bona Fides* Analysis Memo the Department points out differences between Shino-Food's POR sale price and quantity and other sales prices and quantities, but does not articulate any meaningful standards by which it analyzed the price and quantity differences or make rational connections between its observations of the price and quantity differences and its conclusions that the differences indicate atypical business practices. The Department does not provide parties with a notice of the Department's understanding of the law, Shino-Food contends, and without this information parties will not know whether the Department will consider any differences in price or quantity as evidence a sale is not *bona fide*. *See* Shino-Food Brief at 15-19.

Furthermore, in applying its "totality of circumstances" test, according to Shino-Food, the Department creates conflict between what it considers to be "based on normal commercial considerations" versus when it considers sales to be "reflective of the company's or an industry's normal business practices." On the one hand, Shino-Food claims, the Department implies that a sale "based on normal commercial considerations" should reflect market conditions, on the other hand if a company reduces sales prices over time, for instance, the Department suggests that the reduction shows that the initial higher sales prices are atypical. This is a paradox, Shino-Food states. Whether or not the Department can articulate general standards utilized in its *bona fides* analysis, Shino-Food contends, it should be able to articulate specific reasons in this case. However, the Department's sale price analysis and sale quantity analysis in the SF *Bona Fides* Analysis Memo is vague, Shino-Food claims, and provides no support for its conclusion that the POR sale price and quantity is atypical or the sale not *bona fide*. *See* Shino-Food Brief at 15-19.

Overall, Shino-Food argues, given that the price and quantity comparisons the Department used constitute the entirety of the Department's analysis of the sale price and quantity factor in its "totality of circumstances" test, there is no evidence supporting the Department's conclusion with respect to either factor.

Petitioners reject Shino-Food's claims that the Department did not consider market conditions, arguing that the Department did measure the commercial reasonableness of the prices based on Shino-Food's subsequent sales and prices by other producers in the same period. Petitioners argue that the Department's comparison of the POR sale price to post-POR sales prices by Shino-Food is valid and that the price differences provide evidence that Shino-Food's prices during the review period were not typical of a commercial transaction for Shino-Food itself. The Department's comparison of the POR sale price to import prices from the USITC, petitioners contend, also supports the Department's analysis that the POR sale price was not typical of the industry's normal commercial transactions. *See* Petitioners Rebuttal Brief at 14-16.

Petitioners contend that the data reviewed by the Department demonstrate that Shino-Food's pricing did not follow market pricing trends during the same time period, which contradicts Shino-Food's statements that its POR price was typical of the industry. Petitioners also argue that Shino-Food's claims that comparing Shino-Food's sale prices to AUVs is an "apples-to-oranges" comparison is incorrect because CBP mandates that importers report the accurate CBP value of entries based on an arm's length commercial transaction. *See* Petitioners Rebuttal Brief at 16-17.

Petitioners claim that the Department's analysis of the quantity of Shino-Food's POR sale in the SF *Bona Fides* Analysis Memo reveals that Shino-Food's single sale did not reflect its own normal business practices or the industry's normal business practices. Contrary to Shino-Food's arguments, according to petitioners, the Department's quantity analysis is based on an "apples-to-apples" comparison. The fact that the POR sale quantity was not a sample quantity, petitioners claim, is also irrelevant because the Department only needs to find that the quantity is not typical of normal commercial transactions in the industry. Petitioners argue that the Department reviews each case based on the totality of circumstances surrounding the sale at issue; therefore, petitioners contend, it also does not matter that over the course of this order there have been sales with larger or smaller quantities by other entities. *See* Petitioners Rebuttal Brief at 18-19.

Finally, petitioners contend that neither the POR sale price nor quantity alone would trigger a finding by the Department that the sale in question was not *bona fide*. Instead, petitioners argue, it is only because other *indicia* existed that the Department made the non-*bona fides* determination. Furthermore, in response to Shino-Food's contention that the Department often finds small volume sales to be *bona fide* sales, petitioners argue that the Department looks at the totality of circumstances of each individual case and makes determinations either way based on the particular facts of each case, *i.e.*, there is no volume that would be atypical in every case. Petitioners claim that it is clear from the SF *Bona Fides* Analysis Memo, in which the Department articulated a meaningful analysis, that Shino-Food only undertook normal commercial sales once it received bonding privileges, making the POR sale atypical for Shino-Food. Shino-Food cannot expect the Department, petitioners contend, to issue a volume and price "bright line" because the Department must make its considerations on a case-by-case basis in which the analysis might vary with the facts surrounding each sale. The Department did not create a paradox as Shino-Food suggested, petitioners argue, rather Shino-Food was not able to establish that its price was representative of normal commercial considerations during the POR. Petitioners claim the Department's basis for its preliminary results determination was clear. *See* Petitioners Rebuttal Brief at 19-21.

### **Department's Position:**

When making a determination whether a sale is *bona fide*, the Department examines the totality of the circumstances to determine whether the sale is "commercially reasonable" or "atypical." *See Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty New Shipper Review*, 68 FR 1439, 1440 (January 10, 2003) (*Crawfish NSR*). Atypical in this context means unrepresentative of a normal business practice. *See Am. Silicon Techs. v. United States*, 110 F. Supp. 2d 992, 995 (CIT 2000) (*Silicon Techs*),

citing *FAG U.K. Ltd. v. United States*, 945 F. Supp. 260, 265 (CIT 1996).

As petitioners stated, the evidence regarding the price and quantity of Shino-Food's single POR sale, as compared to the company's own subsequent sales, supports the Department's finding that the sale was not *bona fide*. The Department does not agree with Shino-Food's contention that a respondent's "pricing practices" refer only to the act of considering market conditions and negotiating the price for a sale or that the commercial reasonableness of Shino-Food's POR sale is dictated by the fact that an unaffiliated customer in the United States was willing to purchase the sale during the POR at those terms. If the Department accepted this argument, every sale price would be considered *bona fide* if a respondent simply asserted that it considered market conditions and conducted price negotiations. Every sale quantity would be considered *bona fide* if a respondent simply asserted that the sale quantity was a reflection of a customer's needs. To the contrary, the analysis of pricing and quantity practices includes an objective analysis of the prices and quantities themselves, and a demonstration by the respondent, as opposed to a mere assertion, of how the respondent arrived at a particular price or quantity, and, in comparison to its subsequent sales, whether the price or quantity of the single POR sale was atypical. See *New Donghua*, 374 F. Supp 2d at 1342.

The CIT has affirmed the Department's practice of examining objective, verifiable factors in a *bona fides* analysis to ensure that a sale is not being made to circumvent an antidumping duty order. See *New Donghua*, 374 F. Supp 2d at 1339. In the instant case, the Department properly examined POR and post-POR company-specific sales data reported by Shino-Food, and observed that, after Shino-Food obtained the right to ship subject merchandise under bond, it proceeded to ship much larger quantities of merchandise than its POR sale, at prices significantly lower than that of its single POR sale. See *SF Bona Fides Analysis Memo* at 5-7. Thus, the Department observed and verified that the price and quantity of Shino-Food's POR sale was atypical of the price of all of its other U.S. sales of subject merchandise, shipped within months of its POR sale.

While the comparison of the new shipper sale to subsequent sales, where available, is preferable for a *bona fides* analysis, the Department also analyzed Shino-Food's POR sales price and quantity in comparison to the POR AUV. The CIT has affirmed such a comparison in a *bona fides* analysis. See *TPPC*, 366 F. Supp. 2d at 1258. The Department compared Shino-Food's POR sale price to AUVs<sup>4</sup> of all Chinese imports of honey into the United States (using USITC Dataweb information) during the same period and to all POR type-3 entries<sup>5</sup> of honey (using CBP data) into the United States. The Department compared Shino-Food's POR sale quantity to CBP entry data during the same period. The Department, again, observed that after Shino-Food obtained the right to ship subject merchandise under bond, it proceeded to ship much larger quantities of merchandise than its POR sale, at prices significantly lower than all Chinese imports into the United States or all type-3 CBP entries during the same time period. See *SF Bona Fides Analysis Memo* at 5-7. Thus, the Department also observed and verified that the price of Shino-Food's POR sale was "not typical of normal commercial transactions in the

<sup>4</sup> We note that Shino-Food states in its case brief that its sales term for POR and post-POR sales is DDP; therefore, its sales prices cannot be compared properly to AUVs, which usually reflect FOB sales terms. As stated on page 4 of the *SF Bona Fides Analysis Memo*, we obtained FOB prices for Shino-Food's sales at verification, verified these prices, and then used those prices to make our comparisons so that we made an "apples-to-apples" comparison.

<sup>5</sup> Entries designated "type-3" by CBP are entries subject to antidumping duties.

industry.”<sup>6</sup> See *New Donghua*, 374 F. Supp. 2d. at 1338, citing *TTPC*, 366 F. Supp. 2d. at 1248. While this comparison is one aspect of the Department’s price analysis, the Department notes that it serves as corroborating evidence that Shino-Food’s POR sale was atypical.

By either standard, Shino-Food’s POR sale was shown to be atypical. The price and quantity analyses involve an objective comparison of data, as opposed to assertions by Shino-Food that the price or quantity was normal because it reflects the amount requested for purchase by the customer.

With regard to pricing, after noting these significant discrepancies, the Department looked to Shino-Food, as the party who set the prices, to demonstrate to the Department how it arrived at a particular price. Shino-Food has argued that changing market conditions influenced its sales prices and the differences between the POR and post-POR sales prices. In arguing that market conditions changed after the POR, Shino-Food points to the AUVs from USITC Dataweb information as an indicator that market prices of honey from all countries into the United States dropped almost 18 percent between April 2005 and August 2005. We do not dispute that AUVs may be a practical indicator of general pricing trends in the U.S. market. However, while showing that U.S. prices from all countries dropped, Shino-Food offered no explanation for why its post-POR prices dropped at a significantly different rate<sup>7</sup> than that reflected by the USITC Dataweb AUVs. See *SF Bona Fides Analysis Memo* at 5-6 and Attachment 4. Given that Shino-Food did not explain what factors influenced the dramatic lowering of its prices after the POR, including not explaining why its sales prices differed so greatly from the U.S market prices at the time, the Department finds that it must afford less weight to Shino-Food’s assertions. The burden is on Shino-Food, not the Department, to explain how it obtained and took into account market prices, and subsequently incorporated such considerations of the data into its ultimate pricing decisions.

With regard to quantity and Shino-Food’s argument that the Department has an established practice of determining small sales quantities to be commercially reasonable, we have examined the two cases cited by Shino-Food. We note that in both *Garlic from the PRC* and *Zhenyu Crawfish NSR*, the Department found both sales to be *bona fide* after examining the totality of circumstances. See *Garlic from the PRC*, 68 FR at 11369; see also *Zhenyu Crawfish NSR*, 68 FR at 43085. In both cases, as here, the quantity was only one of several factors considered in the *bona fides* analysis. A small quantity, by itself, is not dispositive as to whether a sale is *bona fide*. In this case several other factors exist, which lead the Department to find that the POR sale was not *bona fide*.

With regard to both price and quantity, we do not find that the potential that some transactions in the AUV and CBP data *might* be broken up into smaller shipments or *might* reflect transfer prices between affiliated parties somehow renders the data meaningless. The CBP data examined by the Department for the POR consist of numerous transactions of thousands of metric tons (MT) of honey. The AUV data for imports from the PRC into the United States

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<sup>6</sup> The Department further notes that, as petitioners mention in their rebuttal brief at page 16, because the AUV data that Shino-Food used or the Department used in making the comparisons include Shino-Food imports into the United States as well, the prices reflected are influenced by Shino-Food’s own pricing practices.

<sup>7</sup> The Department used Attachment 4 of the *SF Bona Fides Analysis Memo* to calculate the post-POR drop in prices.

during the POR consist of 11,424 MT of honey worth more than USD 9 million. We note that both sets of data likely contain both constructed export price (CEP) and export price (EP) transactions, as has been observed by the Department in prior reviews of this order. See *Honey from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 74764, 74771-74772 (December 16, 2005), unchanged in *Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 71 FR 34893 (June 16, 2006). Thus, the potential inclusion of CEP sales in the entry data, which may or may not be subsequently sold in smaller quantities or at higher prices, does not diminish the relevance of the data examined. By examining quantity data for all exports, the Department arrives at an average quantity and price that reflects the experience of all honey exporters during the relevant period.

Shino-Food states that the Department creates a paradox by implying that a sale “based on normal commercial considerations” should reflect market conditions, while stating that if a company reduces sales prices over time, the reduction shows that the initial higher sales prices are atypical. As indicated above, the primary basis of the Department’s analysis with respect to Shino-Food’s new shipper sale is its subsequent sales of honey to the United States. The prices and quantities of the subsequent sales show that the price and quantity of the new shipper sale were atypical of Shino-Food’s normal business practices, as Shino-Food failed to demonstrate that the significant price decreases and quantity increases in its subsequent sales were linked to changing market conditions.

Furthermore, the Department notes that finding that Shino-Food’s sale is not *bona fide* is not based solely on a comparison of POR and post-POR sales prices and quantities. The Department’s *bona fides* analysis for Shino-Food makes clear that the analysis was based on the totality of circumstances. The atypical sales price and quantity were only two of several factors. The Department notes that some *bona fides* issues may share commonalities across various Department cases, but that the Department examines the *bona fide* nature of a sale on a case-by-case basis, and the analysis may vary with the facts surrounding each sale. See *New Donghua*, 374 F. Supp. 2d at 1340, citing *Mushrooms FR*, 68 FR at 41308 and accompanying Issues and Decision Memorandum at 20.

Thus, while the price and quantity in this case were two factors that led the Department to conclude that Shino-Food’s sale was not *bona fide*, the Department cannot predict how price and quantity differences would affect the Department’s analysis of the *bona fides* in future cases, as each case must be analyzed within the context of the unique circumstances involved in that segment. The Department thus concludes, based on the data on the record, that the price and quantity of Shino-Food’s single POR sale, on which its antidumping margin would be based, is not predictive of future sales, and is one of several circumstances analyzed that, when observed in their totality, inform the Department’s finding that Shino-Food’s single POR sale was not *bona fide*.

#### **Comment 1b: Payment of Freight and Antidumping Duty Expenses**

Shino-Food argues that the Department's analysis of an informal loan it received to pay the freight and antidumping duties associated with the new shipper sale seems to imply that the Department suspects that Shino-Food may be affiliated with another previously reviewed honey company, that Shino-Food itself may be a previously reviewed company operating under a new name, and that Shino-Food intentionally withheld information that impeded the Department's investigation. Shino-Food claims that it is unreasonable for the Department to equate Shino-Food's error in not anticipating the importance the Department would place on the informal loan information with intentional deception. The banking situation in China is unlike the United States, Shino-Food states, adding that it is a common custom for friends or family members to lend each other money on an informal basis to fill the need for business-related capital and to allow repayment at the borrower's convenience. Shino-Food claims that its informal loan was between good friends, as the Department itself noted in the SF *Bona Fides* Analysis Memo. Given the relevant Chinese customs, Shino-Food contends, there is nothing out of the ordinary about the informal loan the Department discovered, and there was no reason for Shino-Food to suspect the loan would be an important issue for the Department. While the Department's position may be that Shino-Food had the responsibility to anticipate the Department's questions on this matter, Shino-Food contends, it is unreasonable to claim that because Shino-Food did not explain the details of the informal loan until verification that Shino-Food purposely "deprived the Department of an opportunity, over the course of the review, to determine the nature and extent of the relationship." See Shino-Food Brief at 21-23.

Petitioners argue that the record shows that neither the importer nor exporter of the POR honey sale paid the associated freight and antidumping duty deposits on the POR sale. Rather, petitioners state, a friend of Shino-Food's general manager paid these expenses. Petitioners claim this is a highly unusual circumstance that is not representative of normal business practices. While Shino-Food calls this an informal loan, petitioners claim, the record lacks any evidence, such as repayment schedules, loan documentation, interest rates, *etc.*, that the payment was indeed established as a loan or that the loan was paid back. This suggests, petitioners argue, that there is an undisclosed relationship because it is questionable why the loan source would be willing to loan such an amount with no apparent expectation of repayment. Petitioners claim there is no question that Shino-Food did not explain the source of the funds prior to verification and that the Department was prevented from fully investigating the nature of the relationship, *i.e.*, the Department could not verify that Shino-Food was not affiliated with the source of the payment. Furthermore, according to petitioners, it is unreasonable for Shino-Food to have assumed this information was unimportant, especially in light of the fact the Department requires documentation for every element of the POR sale. Petitioners claim that the Department did not state that it found that Shino-Food was affiliated with another party due to the payment arrangements, rather only that the late disclosure of this unusual fact and the inability to explore the relationship left the Department without the ability to satisfy itself that there was no undisclosed affiliation. For all of these reasons, petitioners conclude, the Department reasonably concluded that it could not rely on the accuracy and completeness of the response for establishing the *bona fides* of the POR sale. See Petitioners Rebuttal Brief at 21-22.

### **Department's Position:**

In a new shipper review, particularly when the review is conducted based on a single POR sale, the Department must determine whether the sale is *bona fide*. The Department examines both the transaction-specific details of the sale under review and the companies on both sides of the transaction. As noted in the SF *Bona Fides* Analysis Memo, one piece of this examination is to scrutinize the funds received and the expenses paid by the new shipper and its affiliated companies. Regarding sales expenses incurred by a new shipper, at verification the Department examines documentation demonstrating the source of the payment for the POR expenses to ensure that the company is in fact a new shipper, and not a company whose expenses were provided by other entities, such as prior exporters who might otherwise be ineligible to participate in a new shipper review. The court in *TTPC* stated that in evaluating whether or not a sale is *bona fide*, the Department can consider, *inter alia*, such factors including the expenses arising from the transaction. *See TTPC* 366 F. Supp. at 1250. Thus, antidumping duty and freight expenses relating to the POR sale, in this case, contributed by a third party to Shino-Food are directly relevant to the Department's analysis of the *bona fides* of the transaction. In this case, because Shino-Food did not disclose all of the necessary details regarding these expenses until the Department asked direct questions at verification, the Department was unable to obtain a thorough understanding of the circumstances surrounding the sale, such as the relationship between Shino-Food and the party that paid its new shipper antidumping duty cash deposit and freight expenses for the POR sale.

In this new shipper review, the Department had only one sale to examine and informed Shino-Food prior to verification that it would examine all expenses related to the POR sale in its verification outline. Under the "Summary of Required Source Documents" section of the verification outline, the Department first notifies a company that sales expenses will be examined: "Purchase agreements and records of payment made for costs, charges and expenses, such as canceled checks, bank statements, notifications of payment, reconciliations, payment vouchers and invoices." In sections X and XI of the outline, the Department informs the company that all documents related to the sale in question and all charges and adjustments to that sale will be examined in depth. *See* "Letter to Shino-Food from the Department: Honey from the People's Republic of China: New Shipper Review Verification Outline," dated March 2, 2006 at 11-13 (Verification Outline). Despite being on notice that all aspects of the sale were subject to review, the fact remains that Shino-Foods did not disclose this information until verification, consequently depriving the Department of an opportunity, over the course of the review, to determine the nature and extent of the relationship.

In a review of a company that has not been reviewed previously by the Department, particularly a review that is based on a company's single sale, the Department must be satisfied that the respondent is not affiliated with a company that was previously reviewed. The Department must ensure that a respondent is not merely using the review process as an opportunity to ship merchandise from numerous previously reviewed companies at a lower rate. In a new shipper review, such activity would constitute an abuse of the new shipper bonding process and would run contrary to the intent of the Department's regulatory provisions related to a new shipper proceeding.<sup>8</sup> Shino-Food's failure to provide accurate information regarding payment of freight

<sup>8</sup> The Department notes that on August 18, 2006, the Department implemented the temporary suspension of the new shipper bonding provision in these reviews, in accordance with the Pension Protection Act of 2006, Pub. L. No. 109-280, § 1632, 120 Stat. 780 (2006), which was signed into law on August 17, 2006. The legislation suspended the ability of a U.S. importer to satisfy the antidumping duty deposit requirements by posting a bond or other security

expenses and to acknowledge the role of the friend prior to direct questions from the Department at verification calls into question the overall reliability of Shino-Food's statements and financial records and casts doubt on the *bona fide* nature of Shino-Food's transactions as a whole, including the single POR sale at issue in this review.

As discussed in the SF *Bona Fides* Analysis Memo, in a *bona fides* analysis, the Department examines the totality of the circumstances surrounding the sale under review. In a new shipper review, if information is withheld from the Department or a respondent attempts to significantly impede the investigation by providing inaccurate or incomplete information, this lack of cooperation bears upon the *bona fides* analysis, as the Department cannot be satisfied that it is able to rely on the accuracy and completeness of the statements made to the Department, as well as the documents, books and records provided to the Department. Therefore, when a new shipper review is based on a single sale, if a respondent provides the Department with inaccurate or incomplete information, it may call into question the *bona fide* nature of the sale at issue, as the *bona fides* analysis itself relies upon the accuracy of a respondent's own books and records. While the payment of sales expenses, including antidumping duties, is not sufficient, by itself, to warrant a finding here that the transaction is not *bona fide*, when analyzed together with the totality of the circumstances and irregularities identified in the SF *Bona Fides* Analysis Memo and this memorandum, it further calls into question the *bona fides* of the sale under review. *See Windmill*, 193 F. Supp. 2d at 1312-1314.

#### **Comment 1c: Other Indicia of Non-Bona Fides Sale**

Shino-Food disagrees with the Department's finding in the SF *Bona Fides* Analysis Memo that information concerning Shino-Food's 2006 sales serves as an additional indicator that the POR sale was not *bona fide*. At verification, Shino-Food claims, it told the Department that its 2006 accounting records had yet to be assembled. There is nothing abnormal, according to Shino-Food, about the fact that its records were not assembled at the time, in light of the fact that the verification took place subsequent to a traditional three-week Chinese New Year holiday. Also, Shino-Food contends that it considers a sale completed only after its U.S. customers accept delivery of the goods and that the contract date should not be considered the final date of sale. Shino-Food states that while it should have provided the Department with a more complete explanation of its 2006 sales, the fact that it did not is merely an error in judgment. Moreover, Shino-Food claims that its officials panicked at verification when the Department asked to examine its 2006 accounting records, and in that panic provided the Department with a confused response concerning its 2006 sales. Shino-Food argues that the data in Attachment 2 of the SF *Bona Fides* Analysis Memo prove that there is nothing unusual about its 2006 sales, which, in turn, means that Shino-Food has nothing to hide. Therefore, Shino-Food claims, the Department's conclusion that Shino-Food intentionally withheld information and that this withholding constitutes an additional indicator that the POR sale is not *bona fide* is unfair and not supported by substantial evidence. *See Shino-Food Brief* at 23-26.

In its SF *Bona Fides* Analysis Memo, according to Shino-Food, the Department explained that it was unable to tie all of Shino-Food's warehouse withdrawal slips to Shino-Food's 2005 sales and production records at verification. The Department, Shino-Food states, then concluded that

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deposit in lieu of a cash deposit with CBP during the period April 1, 2006, to June 30, 2009.

Shino-Food's inability to locate all of its warehouse withdrawal slips shows a lack of cooperation and bears upon the *bona fides* analysis such that the Department determined not to rely on Shino-Food's records or statements to the Department. Although Shino-Food agrees that it was unable to find all of its warehouse withdrawal slips at verification, it states that the Department's conclusions are unfair and not supported by substantial evidence. Shino-Food claims that its warehouse slips are not source documents, but informal and temporary mechanisms used for transferring information into its formal accounting system. Shino-Food points out that the warehouse slips were small pieces of thin paper that the company collects by hand-gluing them into booklets and that the slips are easy to lose. Shino-Food argues that the Department successfully verified its formal accounting system, tying the information from sub-ledgers to the general ledger to financial statements, and that this is the more important verification. Therefore, no reasonable person could agree, Shino-Food contends, that its inability to find all of its warehouse withdrawal slips equates to a lack of cooperation. The problem with the warehouse withdrawal slips, according to Shino-Food, should have no bearing on the Department's *bona fides* analysis. See Shino-Food Brief at 26-28.

Petitioners state that because the Department reviews all circumstances surrounding a sale in evaluating the *bona fides* of a sale, as the Department stated in the SF *Bona Fides* Analysis Memo, the Department must review a company's business records. Where those records are incomplete or have been withheld from the Department, petitioners argue, the Department cannot fully evaluate the *bona fides* of the sale. Petitioners contend that the record shows that Shino-Food did not keep its business records in such a way that the Department could have faith in the completeness or accuracy of the questionnaire responses. In response, the Department did not leap to any conclusions, petitioners claim, rather the Department found that it was unable to verify the accuracy of the claims surrounding the POR sale and therefore could not determine that the POR sale was *bona fide*. Besides the antidumping duty payment and informal loan, petitioners contend, Shino-Food was unable to satisfy the Department on two other significant issues. See Petitioners Rebuttal Brief at 23-24.

According to petitioners, Shino-Food misled the Department with regard to certain information at verification. Petitioners claim that Shino-Food admitted these facts in its brief (at pages 24-26). Petitioners argue that Shino-Food's misstatements<sup>9</sup> remove any *indicia* of reliability from Shino-Food's responses and that there is no way for the Department to verify that Shino-Food had no malicious intent as it claims. See Petitioners Rebuttal Brief at 24-25. Therefore, petitioners conclude, it was reasonable for the Department to conclude that Shino-Food's actions at verification regarding this issue were another *indicia* that rendered the POR sale not *bona fide*. *Id.*

Petitioners claim that the Department's inability at verification to tie certain source documents to Shino-Food's records is a failure of verification in the most basic sense. In particular, petitioners contend, the documents that the Department was unable to tie are essential to the Department's analysis. While Shino-Food claimed that the missing documents were informal, petitioners argue that this does not excuse Shino-Food from needing to present a complete record. Furthermore, petitioners contend, while the Department may have been able to tie together "formal" accounting records for Shino-Food at verification, those records cannot be considered

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<sup>9</sup> See BPI statements in Petitioners Rebuttal Brief at 24.

reliable if the underlying records on which they are built cannot be verified. Therefore, according to petitioners, the Department was justified in its conclusion that Shino-Food did not provide complete information or fully cooperate with the Department at verification. *See* Petitioners Rebuttal Brief at 25-26.

### **Department's Position:**

The Department does not find that the information on the record with respect to Shino-Food's 2006 sales and its warehouse withdrawal slips is irrelevant to the Department's *bona fides* analysis. Regarding the 2006 sales information, the Department cannot say why Shino-Food did not provide accurate information about its 2006 sales. The Department can only say that it asked questions regarding the 2006 sales, received an answer at verification, and later found other evidence that the Department placed on the record of this proceeding, which demonstrated that Shino-Food's verification statements regarding those sales were inaccurate or incomplete. *See* SF *Bona Fides* Analysis Memo at 10-11 and Attachment 2. We do not find Shino-Food's explanation to be compelling. Moreover, at verification, Shino-Food was unable to demonstrate to the Department how its warehouse withdrawal slips tied to its 2005 financial records. The Department notes that its verification outline specifies that it will examine all documents related to a company's financial records, including source documents, which in this case are the warehouse withdrawal slips. Under the "Summary of Required Source Documents" section of the verification outline, at "Raw material issuing tickets," the Department first notifies a company that inventory source documents will be examined. In Section XIII of the verification outline, the Department informed Shino-Food that it should "{p}repare **three** sets of documents to support the reported per-unit consumption amount of material inputs. The package should include all purchase, inventory, production, and accounting records necessary to tie the per-unit amount reported to the general ledger. Be prepared to discuss the specifications used in the processing of honey." *See* Verification Outline at 14-15. Regardless of the importance Shino-Food claims it places on its warehouse withdrawal slips as source documents kept and maintained for the company's financial records related to inventory, the fact that these records did not tie to the financial statements calls into question the accuracy of Shino-Food's 2005 financial records, including the POR of January to May 2005, particularly given that Shino-Food accepted this evidentiary burden by requesting a new shipper review.

In a *bona fides* analysis, the Department examines the totality of the circumstances surrounding the sale under review. If information is withheld from the Department (as in the 2006 sales) or a respondent attempts to significantly impede the investigation by providing inaccurate or incomplete information (as in the failure to tie the warehouse withdrawal slips to the 2005 financial records), this lack of cooperation bears upon the *bona fides* analysis, as the Department cannot be satisfied that it is able to rely on the accuracy and completeness of the statements made to the Department, as well as the documents, books and records provided to the Department. *Notice of Rescission of Antidumping Duty New Shipper Reviews: Freshwater Crawfish Tail Meat from the People's Republic of China*, 71 FR 37902 (**July 3, 2006**), and accompany Issues and Decision Memorandum at Jiangsu Jiushoutang Organisms-Manufactures Co., Ltd.'s Comment 3 and Shanghai Sunbeauty Trading Co. Ltd.'s Comment 3. Therefore, if a respondent provides the Department with incomplete or inaccurate information, particularly in a review based on a single sale, the Department may find

the sale not *bona fide*, as the *bona fides* analysis itself relies upon the accuracy of a respondent's representations to the Department.

In regard to the 2006 sales information and the warehouse withdrawal slips, the Department has not made any conclusions regarding these two *indicia*, as petitioners stated, rather we found that we were unable to verify the accuracy of the claims surrounding Shino-Food's POR sale. Therefore, we could not determine that the POR sale was *bona fide*. While the *indicia* discussed above may not be sufficient, by themselves, to warrant a finding here that the transaction is not *bona fide*, when analyzed together with the totality of circumstances and irregularities identified throughout this memorandum and the SF *Bona Fides* Analysis Memo, it further calls into question the *bona fides* of the sale under review.

## **Taiside-Related Issues**

### **Comment 2: Appropriate Surrogate Value for Bottles, Caps, Labels**

In the Taiside Brief, respondent argues that the Department did not use the best information available to value factors as required by 19 U.S.C. § 1677b(c)(1). Taiside argues that the Department's use of World Trade Atlas (WTA) data, which was obtained from the Directorate General of Commercial Intelligence and Statistics (DGCIS) of the Indian Ministry of Commerce and Industry, to value plastic honey bottles and caps is overly broad, encompassing products irrelevant to honey packaging.

Taiside argues that the nonspecific Indian harmonized tariff schedule (HS) used by the Department to value plastic bottles could potentially encompass a large variety of plastic container products, such as expensive, sophisticated plastic containers and offers no practical parameters. Thus, Taiside argues that the HS from the WTA is excessively broad for valuing plastic honey bottles. Taiside similarly argues that the HS used to value plastic caps is also excessively broad, as the WTA description could include a large spectrum of plastic closures.

Taiside argues that the Department should value plastic bottles and caps using the publicly available information provided in the audited 2005–2006 annual reports from Darbur's largest honey producer, Indian Honey Producer Dabur India Ltd. (Dabur Annual Report). *See* Taiside Brief at 2 and Attachments 1 & 2 of its surrogate value submission. Taiside argues that the annual report covers the entire POR of the new shipper review and provides an itemized price for plastic containers and caps. Taiside explains that the Department can distinguish the costs of bottles from caps by deriving a ratio based on the weight of bottles to the weight of the caps. Therefore, Taiside argues that the Department should use the Dabur Annual Report to value plastic bottles and caps as the Department prefers to use the most reliable, highest quality, specific and contemporaneous information available.<sup>10</sup> *See* Taiside Brief at 3–6.

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<sup>10</sup> *Citing Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 67 FR 72139 (December 4, 2002), and accompanying Issues and Decision Memorandum (*Garlic Decision Memo*) at Comments 6; and *Final Results of First New Shipper Review: Certain Preserved Mushrooms from the People's Republic of China*, 66 FR 31204 (June 11, 2001), and accompanying Issues and Decision Memorandum (*Mushrooms 1<sup>st</sup> Review Decision Memo*) at Comment 5.

Taiside argues that, should the Department decline to use the Dabur Annual Report, the Department should value honey bottles and caps using the publicly available expected costs published by the Central Institute for Research and Training in Employment Service (CIRTES), Ministry of Labour: “Small Scale Honey House and Processing Plant.” See Taiside Brief at 2 and Attachment 3 of its surrogate value submission. Taiside claims that regardless of whether the Department uses the CIRTES data to value plastic bottles and caps, the Department should use the CIRTES data to value labels. As the expected cost of “bottles, lids, labels, etc.” is itemized, Taiside explains how the Department can apply the surrogate value and distinguish the cost of bottles, caps, and labels using the ratio derived from the weight of an unlabeled bottle to the weight of the cap.

Taiside argues that the CIRTES data are credible, reliable, high quality, and specific to honey processing in India and are representative of countrywide prices. Furthermore, Taiside argues that the Department can inflate the data to be contemporaneous to the POR.<sup>11</sup> Taiside asserts that the CIRTES data are the best available for valuing labels, as they are specific to honey production.

Taiside argues that, should the Department decline to use the data from the Dabur Annual Report and the CIRTES data, the Department should use the publicly available prices for Polyethylene Terephthalate (PET) containers, based on Indian market research (PET Container Report) from <http://indiamarkets.com> (Indiamarkets), of IMO Communications Pvt. Ltd (IMO). See Taiside’s Brief at Attachment 4. Taiside argues that the PET Container Report is reliable, credible, high quality,<sup>12</sup> and specific to bottling of food and beverage products in India. Thus, if the Department declines to use the Dabur Annual Report and the Honey Processing Study, the Department should use the PET Container Report data to value honey bottles, caps, and labels.

In their Rebuttal Brief at 2, petitioners argue that the Dabur Annual Report relates to the wrong fiscal period. Petitioners argue that while respondents reference the 2004–2005 fiscal year, only one page of the 2005–2006 Dabur Annual Report was attached, which only covers two months of the POR. Petitioners argue that the data from 2004–2005 was parenthetically included, and that the data are presented without explanation or context. Petitioners further argue that the Dabur Annual Report is incomplete because it contains only one page, and that Dabur also sells various other products that also consume various types, costs, and qualities of plastic containers, which are nonspecific to honey. See Petitioners Rebuttal Brief at 2.<sup>13</sup>

Petitioners also contend that the Department cannot use the CIRTES data because the data 1) were published in 1995 and are extremely out-dated, 2) only provide select elements of the

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<sup>11</sup> *Citing Memorandum to the File: Factors of Production Valuation Memorandum for the Preliminary Results of New Shipper Administrative Reviews of Honey from the People’s Republic of China* (May 30, 2006).

<sup>12</sup> Based on the fact that the Indiamarkets group of IMO is a provider of business information which counts among its investment and strategic partners the likes of Intel Capital (part of Intel Corporation), E.M. Warburg, Pincus & Co. LLC, Ariba Inc., and Dun & Bradstreet Information Services India Pvt. Ltd. See Taiside’s Brief at 9.

<sup>13</sup> Petitioners also argue that, despite Dabur’s market share in the honey market, the Department prefers to use relatively broader countrywide prices. See Petitioners Rebuttal Brief at 3. Furthermore, petitioners argue that Dabur is a reseller of imported honey from China, as evident from the excise taxes applied to the 2004–2005, and 2005–2006 Dabur Annual Reports. See Petitioners Rebuttal Brief at 3 and Exhibit 2 & 3. Petitioners argue that Chinese imports could potentially account for a majority of Dabur’s honey sales, thus distorting Dabur’s data and rendering it unusable.

study, 3) are based on the projected costs of developing one small honey house/processing plant to operate four cycles per year, and 4) only report aggregate costs of bottles, lids, and labels. See Petitioners Rebuttal Brief at 5.

Petitioners further argue that the Indiamarkets data submitted by respondent pertain to packaging mineral water and carbonated beverages and have nothing to do with honey bottles. Petitioners maintain that the PET containers proposed by respondent are made of low-density polyethylene LDPE, while honey containers are molded and thick-walled plastics. Petitioners assert that PET containers for water are not comparable to honey bottles.

### **Department's Position:**

In valuing factors of production, section 773(c)(1) of the Tariff Act of 1930, as amended (the Act) instructs the Department to use “the best available information” from the appropriate market economy country. In choosing the most appropriate surrogate value, the Department considers several factors, including the quality, reliability, specificity, and contemporaneity of the source information. See, e.g., *Garlic Decision Memo* at Comment 6. The Department attempts to find the most representative and least distortive market-based value in the surrogate country. See *Mushrooms 1<sup>st</sup> Review Decision Memo* at Comment 5. The Department undertakes this analysis on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry. As further noted in the *Garlic Decision Memo*, the Department prefers, whenever possible, to use countrywide data, and only resorts to company-specific (or regional) information when countrywide data are not available.

For the reasons outlined below, the Department finds that the WTA data represent the best available information. As an initial matter, the Department disagrees with Taiside's claim that the WTA data are too broad to provide a usable surrogate value for plastic bottles and caps. The Department used HS 39233090, which covers “plastic stoppers, lids, caps and other closures, of plastics: carboys, bottles, flasks and similar articles.” While the Department recognizes that the HS code is a basket category for plastic containers, the Department finds that the WTA Indian import statistics reasonably represent plastic containers that may be used in the packaging of honey. Moreover, Taiside provided no record evidence to substantiate its speculation that the HS for plastic bottles and caps actually include inappropriate sizes and qualities of the plastics containers, which would lead to distortive results. Also, for numerous other NME cases, the Department has found that the import data from WTA represent the best available information for valuation purposes because it is an average import price, representative of periods during the POR, product-specific, and tax exclusive. See *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China* 71 FR 29303 (May 22, 2006), and accompanying Issues and Decision Memorandum at Comment 11A. Thus, without specific record evidence that the WTA data are distorted, the Department finds that the WTA data are a quality source as they are reliable and contemporaneous to the POR.

Furthermore, although Taiside also proposed new label values, it has not demonstrated why the WTA value used is distorted. Thus, the Department will continue to use WTA data to value labels.

In regard to the Dabur Annual Report, the Department finds that, as the Annual Report is a single page taken from the 2005–2006 annual report, it is not a complete financial statement, and covers only a single month in the instant POR. The Department notes that while the Dabur statements do provide the financial data for the previous year—the data more specific to the instant POR—2004 data is parenthetically listed with no accompanying auditor’s notes, company comments, context, or explanation. Accordingly, in the absence of such information, the Department is unable to evaluate the reliability of the data. This is consistent with the Department’s determination in fish fillets from Vietnam, where it declined to analyze financial ratios that had been submitted without the source documentation. *See Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003) and accompanying Issues and Decision Memorandum at Comment 3. Therefore, the Department finds that the Dabur Annual Report is an unusable source to value plastic bottles and plastic caps.

The Department also finds that the CIRTES data are unusable to value plastic bottles, plastic lids, and labels. First, the CIRTES data appear to be a research study that projects the costs of various small businesses in a localized region of India, which includes low levels of honey production, and does not reflect actual market costs. Accordingly, the Department finds that the data are not a reliable source because they are not based on actual prices and represent a single region of India, which provides low volumes of honey. Second, the CIRTES data, which are from 1995, are extremely outdated. For these reasons, therefore, we find CIRTES data to be less preferable than the WTA data.

Finally, the Department disagrees with Taiside’s assertion that the PET Container Report is a better source to value plastic bottles and plastic caps for honey than WTA. As indicated above, the Department prefers to use contemporaneous, countrywide, actual transaction prices as surrogate values, such as provided by the WTA. The Department finds that spot price quotes and price ranges are less reliable sources than WTA import data as the Department is unable to ascertain whether the quoted price is applicable to true sales prices, the extent of other transaction costs, and the source of the information. Therefore, because the Department has usable and contemporaneous WTA import data, which include the input at issue, we have rejected the use of the PET Container Report to value bottles and caps. While the Department may have used price quotes in a very small number of cases in the past, we have done so only after concluding that the flaws inherent in using these quotes as surrogate values were overshadowed by the fact that there was no other source of usable, reliable information. *See Notice of Final Determination of Sales at Less Than Fair Value: Saccharin From the People's Republic of China*, 68 FR 27530 (May 20, 2003) and accompanying Issues and Decision Memorandum at Comment 1. Such is not the case here.

Because we find that the WTA data for valuing honey bottles, caps, and labels represent the best available information, the Department will continue to use these data in the final results.

### **Comment 3: Appropriate Surrogate Value for Raw Honey**

Citing the May 2005 AUV for imports from India from ITC Dataweb<sup>14</sup> for Harmonized Tariff Schedule of the United States (HTSUS) code 04090000,<sup>15</sup> Taiside argues that the Department's surrogate value for honey is too high. Taiside asserts that while the basket HTSUS category includes both raw and processed honey, and is not appropriate for calculating the raw value for honey, it provides parameters for an appropriate surrogate value. Taiside argues that the surrogate value of raw honey cannot reasonably exceed the per-kilogram U.S. import price from India. Taiside contends that Indian producers would not purchase raw honey at prices exceeding their sales price; therefore, Taiside argues, the Department should limit the surrogate value to a maximum price based on the AUV reported by the ITC Dataweb. *See* Taiside Brief at 10-12.

Taiside argues that the Department should use the CIRTES data to derive the surrogate value for raw honey. Taiside maintains that the publicly available expected raw honey price reported by CIRTES is the best available information available as it is industry-specific, represents countrywide prices, and is credible, reliable, and high quality. Otherwise, Taiside contends, the Department should limit the cost of raw honey as previously discussed. *See* Taiside Brief at 12.

Petitioners argue that the Department does not examine Indian export data, but rather Indian import data. Furthermore, the U.S. import data provided by Taiside does not relate to either raw honey or Indian imports. Petitioners argue that the Department cannot use the CIRTES data to value raw honey for the same reasons previously outlined in their arguments on bottles and caps. *See* Petitioners Rebuttal Brief at 5.

### **Department's Position:**

Pursuant to section 773(c)(1) of the Act, the Department is to use "the best available information" from the appropriate market economy country to value FOP. In selecting the most appropriate surrogate value, the Department considers several factors, including the reliability, quality, specificity, and contemporaneity of the source information. *See, e.g.*, Garlic Decision Memo at Comment 6; and Mushrooms 1<sup>st</sup> Review Decision Memo at Comment 5. In selecting the EDA Rural Systems Pvt Ltd.<sup>16</sup> (EDA) data as the basis for the raw honey surrogate value, the Department found that the raw honey pricing data from this source represent the best information currently available because they are publicly available, credible data, and are specific to the raw honey beekeeping industry in India. We note that the EDA data are from a published, publicly available source. With respect to quality, we find that the source of the EDA data is highly documented, including numerous specific price points over a six-year period for multiple types of honey from many suppliers, and includes detailed information on production, inputs, and beekeepers. Regarding specificity, we note that the prices quoted in the EDA data are specific to the raw honey beekeeping industry in the state of Bihar in India, which the Department found to be the second largest honey producing region in India. *See Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 71 FR 34893 (June 16, 2006) and accompanying Issues and Decision Memorandum, at Comment 1. Regarding reliability, the Department finds that the data

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<sup>14</sup> <http://dataweb.usitc.gov/>

<sup>15</sup> *See* July 12, 2006, Lee & Xiao surrogate value submission.

<sup>16</sup> Data from EDA can be found at <http://www.litchihoney.com>. *See* Petitioners February 17, 2006, surrogate value submission at exhibit 2.

collection methods for the EDA data are documented with respect to data sources, distribution, and collection practice.

As indicated in the Department's factor valuation memo issued in the preliminary results, the Department determined that the raw honey value in India changed significantly from previous periods of review and, therefore, made an adjustment to the EDA data to reflect the reality of the raw honey market in 2005. *See* Factors of Production Valuation Memorandum for the Preliminary Results of New Shipper Administrative Reviews of Honey from the People's Republic of China (May 30, 2006).

The Department disagrees with Taiside's contention that the adjusted EDA raw honey value is excessively high based on U.S. import prices. As an initial matter, the Department's adjusted EDA value is corroborated by other data on the record of this proceeding. Various POR contemporaneous articles provide spot raw-honey prices for different regions in India, which corroborate the suitability of the Department's methodology and source.<sup>17</sup>

Furthermore, the Department disagrees that it should cap the honey price based on the average U.S. import price from India during a single month of the POR when the new shipper sale was made. As an initial matter, and consistent with past practice, the Department recognizes that India maintains broadly and non-specific export support subsidies, and thus Indian export prices are excluded from the Department's consideration.<sup>18</sup> Furthermore, Taiside provides only a single month of data, which is not representative of the POR. As a U.S. import price, the price is representative of the U.S. market and not the domestic Indian market for raw honey, upon which the EDA value is based. Therefore, the Department finds that the single month AUV is an unsuitable measure, and provides inappropriate guidelines in valuing domestic raw honey prices in India.

Consistent with the Department's position on bottles, caps, and labels explained above, the Department finds that the CIRTES data is less preferable to value honey as the CIRTES data appears to be a research study that projects the costs of various small businesses in a localized region of India and does not reflect actual market prices of raw-honey in India. Because of the outdated nature of the study, given the commodity nature of raw-honey, the use of data from 1995, even if inflated, would lead to potentially distorted results. We note that in the instant case, the Department determined to adjust the EDA data, which dates from 2003 period, based on current news articles to reflect the changing market circumstances. The record contains no such information as to whether expected honey prices in 1995 are comparable to those experienced ten years later.

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<sup>17</sup> *See, e.g.*, "Golden Jubilee of Honey Producers' Society on Monday," published in *The Hindu* in February 2005, citing a price paid by the Kodagu Society in Karnataka state to farmers of Rupees 80 per kilogram, contained in Petitioner's February 17, 2006, surrogate value submission.

<sup>18</sup> *See Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 12651 (March 15, 2005) and accompanying Issues and Decision Memorandum at Comment 4; *Heavy Forged Hand Tools (Bars and Wedges) from the People's Republic of China: Final Results of Antidumping Duty Administrative Review of the Order on Bars and Wedges*, 68 FR 53347 (September 10, 2003) and accompanying Issues and Decision memorandum at Comment 2; and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China*, Final Results of 1999-2000 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part, 66 FR 57420 (November 15, 2001) and accompanying Issues and Decision memorandum at Comment 1.

Therefore, consistent with its practice, the Department has determined to continue to use the EDA data, as it is the best, most contemporaneous, reliable, veracious data available to value domestic Indian raw honey prices. We have continued to adjust the EDA value using the methodology explained in the preliminary results.

**RECOMMENDATION:**

Based on our analysis of the comments received, we recommend adopting all of the above positions. If accepted, we will publish the final results of the review and the final weighted-average dumping margins in the *Federal Register*.

AGREE \_\_\_\_\_ DISAGREE \_\_\_\_\_

\_\_\_\_\_  
James C. Leonard, III  
Acting Assistant Secretary  
for Import Administration

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Date