

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

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

SUBJECT: Issues and Decision Memorandum for the 2004-2005
Administrative Review of Honey from Argentina: Final Results of
Antidumping Duty Administrative Review.

Summary

We have analyzed the case and rebuttal briefs of the interested parties in the 2004-2005 administrative review of the antidumping duty order on honey from Argentina (A-357-812). As a result of our analysis, we have made changes to the margin calculation as discussed below. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues for which we received comment from parties:

1. Whether to Apply Adverse Facts Available as a Result of Seylinco's Reported Grade/Color
2. Revocation
3. Adverse Facts Available for Beekeeper 2
4. Beekeeper Feed Costs
5. Beekeeper Drums Costs

Background

On December 29, 2006, we published the preliminary results of the 2004-2005 administrative review of honey from Argentina. See Honey from Argentina; Preliminary Results of Antidumping Duty Administrative Review and Intent Not to Revoke in Part, 71 FR 78397 (December 29, 2006) (Preliminary Results). This review covers one mandatory respondent, Seylinco, S.A. (Seylinco), an exporter of honey from Argentina to the United States during the period of review (POR) of December 1, 2004 to November 30, 2005. In response to the Preliminary Results, the American Honey Producers Association and the Sioux Honey

Association (collectively, petitioners) and Seylinco submitted case briefs on January 29, 2007. Petitioners and Seylinco filed rebuttal briefs on February 5, 2007. In addition, three ex parte meetings were held with respect to this review. See Memoranda to the File, from Maryanne Burke, Case Analyst dated March 6, 2007 and March 19, 2007, on file in CRU in room B-099 of the main Commerce building.

Discussion of Issues

Comment 1: Whether to Apply Adverse Facts Available as a Result of Seylinco's Reported Grade/Color

Petitioners argue the Department should apply total facts available to Seylinco for these final results because Seylinco did not provide proper control numbers (CONNUMs) for its sales of honey. Petitioners maintain Seylinco has refused to report the accurate grade/color of its honey sold to both the United States and its largest third-country market (Germany) as required by the Department's original and supplemental questionnaires.

First, for both markets the Department instructed Seylinco to report the grade/color of honey for each sale as one of the following colors: "White," "Extra Light Amber," "Light Amber," or "Other (e.g., Dark Amber)." However, Seylinco responded that the grade/color of all its U.S. and German sales was "Light Amber or Better," which Seylinco coded "C" in the U.S. and German sales listings (equivalent to the Department's designation "Light Amber"). Second, petitioners contend Seylinco is in fact able to report honey sales by actual grade/color as evident in its original section A questionnaire response, dated April 26, 2006, in which the company stated "honey is inspected and graded (for color) upon arrival at its warehouse and if it does not meet the required standards it is rejected." See Petitioners' Case Brief at 4. Petitioners note Seylinco further stated "the honey it sells is differentiated by grade/color." See Petitioners' Case Brief at 5. Third, petitioners maintain Seylinco had information detailing the actual grade/color of its honey for each sale, but did not provide such data despite the Department's second request for such information in its July 31, 2006, supplemental questionnaire. Rather, petitioners argue, Seylinco collapsed all honey sold to both markets having a Pfund¹ rating of less than 85 mm into one category, essentially merging three different grade/colors ("Light Amber," "Extra Light Amber," and "White") into one ("Light Amber"). Petitioners accuse Seylinco of making no attempt to identify the actual grade/color of its honey. Rather, petitioners state, Seylinco merely replied that reporting such information would be burdensome for the company without offering any explanation as to how or why compiling such data would prove burdensome. Id. Fourth, petitioners claim Seylinco had the ability to report each sale by actual color as confirmed by the Department's findings at verification that Seylinco identified the color of honey "for most drums

¹ Pfund scale is the international standard for measuring the color of honey.

shipped for each sale” and that color (and HMF² levels) were also a basis of customer complaints. See Petitioners’ Case Brief at 6 and 7.

Petitioners argue Seylinco’s method of reporting grade/color inappropriately constructed a single control number (field CONNUMT/U) which combined honey of various colors and different values. Petitioners maintain that such reporting resulted in unfair product matching between the United States and German market sales because it cannot presently be determined how much differences in color affect pricing. See Petitioners’ Case Brief at 7 and 8. Petitioners assert Seylinco should not be allowed to benefit from unilaterally altering the Department’s product matching criteria by bunching products with differing characteristics together. Petitioners argue Seylinco did not provide the necessary information for the Department to perform an accurate model match and dumping margin calculation. Therefore, petitioners insist, the application of facts available is permissible under section 776(a)(1) of the Tariff Act of 1930, as amended (the Tariff Act). See Petitioners’ Case Brief at 10. Petitioners note that by refusing to report grade/color in the manner requested, Seylinco withheld information and consequently impeded the investigation, further establishing grounds for the use of facts available under section 776(a)(2)(A) and (C) of the Tariff Act. Id. Also, petitioners state that subject to section 776(a)(2)(B) of the Tariff Act, the Department may consider information on the record if, among other requirements, the information has been placed on the record by the Department’s stated deadline, and the respondent has acted to the best of its ability to comply. However, petitioners contend Seylinco never placed the correct CONNUMT/U information on the record and therefore did not supply information to the best of its ability. See Id. at 11.

In establishing the grounds for use of facts available, petitioners state the Department must also determine whether applying adverse inferences is warranted under section 776(b) of the Tariff Act. See Petitioners’ Case Brief at 12. Petitioners argue the use of adverse facts available is appropriate when an interested party has failed to cooperate by not complying with a request for information. In support of their argument, petitioners cite the Uruguay Round Agreements Act, Statement of Administrative Action (SAA), H.R. Doc. No. 103-316 (1994) at 870, which explains “where a party has not cooperated, Commerce and the Commission may employ adverse inferences about the missing information to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. In employing adverse inferences, one factor the agencies will consider is the extent to which a party may benefit from its own lack of cooperation.” See Petitioners’ Case Brief at 14. Consequently, petitioners maintain Seylinco’s reporting of grade/color resulted in a zero margin in the preliminary results which furthers the company’s goal of being revoked from the order. However, petitioners argue, Seylinco should not benefit from its lack of cooperation and, if Seylinco is to receive a zero margin in the final results, the margin rate should be based on accurate data in full compliance with Department instructions. Id. Petitioners conclude that because Seylinco has purposely failed to prepare a complete and accurate record, the Department should apply adverse facts

² HMF (Hydroxy-Methyl-Furfuraldehyde) measures the degradation of honey due to heat and storage changes.

available. Petitioners urge the Department to apply the highest rate from the original investigation (55.15 percent) to Seylinco in the final results.

Seylinco insists it accurately reported the grade/color of its honey and an adverse inference is not warranted. Seylinco maintains the Department verified the majority of its honey was indeed sold as “Light Amber or Better” and has determined such reporting is correct and accurate in past reviews. See Seylinco’s Rebuttal Brief at 2. Seylinco claims it has been fully cooperative in every aspect of this administrative review and asserts it did not sell honey on the basis of color, adding that its customers are packers who knowingly receive a mix of light- to medium-colored honey and are satisfied with a range of color. Also, Seylinco states its customers even re-mix individual drums of honey from all sources to achieve further blends of color unknown to Seylinco. Seylinco argues it cannot order bees to produce on command a full container load of honey corresponding to a specific Pfund number. Seylinco also notes the Department confirmed at verification that Seylinco does not have adequate inventory levels to sell containers of a uniform color. See Seylinco’s Rebuttal Brief at 2. Seylinco states the Department also examined scientific laboratory tests on samples of honey which showed the color of a container of honey does not result in a simple average value of the individual colors, but rather reflects a higher value of the colors mixed. See Seylinco’s Rebuttal Brief at 3. As such, Seylinco maintains it would be difficult to determine an accurate grade/color for each container for a given sale.

Also, Seylinco argues the Department verified that color was not listed anywhere in the sales documentation, maintaining that such data would have been noted if they were important to its customers. Rather, Seylinco states it did not keep computerized records of color for individual drums, and adds it did not have records for all drums. Seylinco affirms it linked handwritten laboratory data to drum colors as requested by Department officials at verification, but that it previously did not need to perform such exercises because its customers were only concerned with receiving a range of color. In fact, Seylinco notes its capability to test and partially reconstruct such records is a new practice outlined in Argentine Government regulations which were established during the middle of the POR due to previous contamination issues. See Seylinco’s Rebuttal Brief at 3.

Seylinco argues it has sold honey to both the U.S. and German markets as “Light Amber or Better.” Seylinco contends the Department has accepted this reporting methodology in previous reviews, and argues its customers likewise have done business with Seylinco in the same manner for years. Seylinco maintains its invoicing and pricing practices were developed under the guidance of the three previous administrative reviews and argues “even if individual barrel colors could mostly be constructed, which Seylinco realized at verification, this circumstance does not make it fair or reasonable for the Department to change its price comparison methodology mid-stream in this administrative review.” See Seylinco’s Rebuttal Brief at 3. Seylinco contends the Department has sufficient data on the record to construct a color matching criterion for this review yet argues that doing so would be problematic for two reasons. First, Seylinco claims it is difficult to determine an accurate color of a sale as evident from the laboratory test results. Second, Seylinco asserts that market preferences differ between the United States and Germany,

with each market valuing the various colors (e.g., White, Light Amber, or Amber) differently. Thus, if the Department were to manually reclassify colors it would not result in the most accurate matching between markets under the current matching criteria. Seylinco did not further elaborate this argument. See Seylinco's Rebuttal Brief at 4. However, if the Department were to devise a different set of matching criteria, Seylinco admits the data exist for it to submit a revised sales listing for the final results. See Seylinco's Rebuttal Brief at 4. Finally, Seylinco maintains it did not intentionally withhold information identifying the color of each sale, arguing it had no incentive to do so because any reasonable reclassification of color designation, however contrived, would still demonstrate Seylinco has not been selling honey below normal value. See Seylinco's Rebuttal Brief at 4.

Department Position: We disagree with petitioners that we should apply total facts available with an adverse inference to Seylinco. Contrary to petitioners' claims, we determine Seylinco neither withheld information subject to section 776(a)(2)(A) of the Tariff Act, nor significantly impeded this segment of the proceeding under section 776(a)(2)(C) as the Department had sufficient data on the record to calculate an accurate margin for these final results. Moreover, we find that necessary information is not lacking from the record within the meaning of section 776(a)(1) of the Tariff Act. However, we do find Seylinco failed to provide information concerning grade/color in the form and manner requested in accordance with section 776(a)(2)(B) of the Tariff Act. Section 776(a)(2)(B) is subject to section 782(e) of the Tariff Act which states the Department shall not decline to consider information submitted by an interested party if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties. As noted in petitioners' case brief, the Department's original questionnaire requested that Seylinco report grade/color as either "White," "Extra Light Amber," "Light Amber," or "Other (e.g., Dark Amber)." In its questionnaire response, Seylinco reported all of its sales of honey were "Light Amber or Better." See Seylinco's sections B and C questionnaire response, dated May 26, 2006, at 5 and 4, respectively. The Department sought clarification of this response and requested that Seylinco revise field GRADET/U in its first supplemental questionnaire issued July 31, 2006. In its response, Seylinco stated "its honey falls within a specific color range, which is light amber or lighter up to a maximum of 85 mm." See Seylinco's first supplemental section B questionnaire response at 2 and first supplemental section C questionnaire response at 1, both dated August 17, 2006. Seylinco asserted the Department accepted the same grade/color designation in the previous three reviews and that the company bought and sold honey in the same manner during this POR, as in previous reviews. In its first supplemental response, Seylinco also requested that the Department reconsider requiring it to revise GRADET/U as this would have no impact on the margin and would be burdensome for the company. Although the Department issued a second supplemental questionnaire on August 25, 2006, we did not further address the issue of revising GRADET/U.

However, during the course of verification we asked Seylinco for additional information concerning the color of its honey sold during the POR. Specifically, Seylinco supplied contracts which were issued by certain customers to Seylinco stating quantity, delivery terms, color and price. See Memorandum to the File, from the Team, regarding “Verification of the Sales Response of Seylinco S.A. in the Antidumping Administrative Review of Honey from Argentina” (Sales Verification Report), dated December 7, 2006 at 10. Also at verification Seylinco provided for most sales a list of the color of honey for drums within a particular shipment based on its laboratory records. We corroborated Seylinco’s list of colors per shipment with information from customer contracts and corresponding invoices and noted inconsistencies with Seylinco’s reported sales listings. See Sales Verification Report at 2. In particular, upon reviewing Seylinco’s breakdown of honey colors shipped per invoice we found that not all sales reported by Seylinco as “Light Amber or Better” are equivalent to “Light Amber” as per the Department’s model-match criteria. We find the information supplied at verification to be sufficient and reliable because it provided a more detailed range of color than Seylinco’s original and supplemental questionnaire responses. Therefore, we find that Seylinco’s method of reporting GRADET/U in its original and supplemental questionnaire responses, while previously accepted by the Department, was not the most accurate or reflective of these same data.

Our model-match concerning color/ grade is based on a respondent reporting honey as either “White,” “Extra Light Amber,” “Light Amber,” or “Other (e.g., Dark Amber)” depending on the sale at issue. In review of the data collected at verification (i.e., customer contracts, list of color of honey per drum) we determine Seylinco did not report its sales accordingly and therefore we have revised GRADET/U for certain sales to more closely reflect the verified information. We accounted for the following factors (where available) in our reclassification of GRADET/U: (1) description on the invoice; (2) colors of honey shipped per sale based on laboratory results; and (3) customer contracts (if applicable). As a result of revising GRADET/U, multiple CONNUMs were created, thus enabling the Department to perform a more accurate product comparison. For more information, see Memorandum to the File, from Maryanne Burke, Case Analyst “Analysis of Data Submitted by Seylinco for the Final Results of Honey from Argentina (A-357-812)” (Seylinco Final Analysis Memorandum), dated April 27, 2007.

In doing so, we clarify that contrary to respondent’s statement we have not altered the standard model-match criteria for these final results. In general, the Department refrains from revising the model-match criteria unless there is considerable and compelling evidence that the current model-match criteria are not reflective of the merchandise in question, there have been industry changes to the product that merit a modification, or there is some other compelling reason present which requires a change. See Notice of Final Results of the Twelfth Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 72 FR 13086 (March 20, 2007) and accompanying Issues and Decision Memorandum at Comment 1. We find no such evidence in this segment of the proceeding and thus have merely revised Seylinco’s reported GRADET/U to more closely reflect our existing model-match methodology. In revising Seylinco’s submitted information, we determine, pursuant to sections 782(e)(3) and 782(e)(4) of the Tariff Act, that this information is

not so incomplete that it cannot serve as a reliable basis for our determination and that such information can be used without undue difficulties. Accordingly, there is no basis to resort to the facts otherwise available under section 776 of the Tariff Act. As we are not resorting to facts otherwise available, there is no basis to apply an adverse inference.

Comment 2: Revocation

Seylinco contends it should be revoked from the antidumping order because it has met the criteria for revocation in the instant review. Seylinco claims the Department's preliminary finding that Seylinco not be revoked from the order is a violation of Seylinco's rights under Article 11 of the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Antidumping Agreement) in the Uruguay Round Agreements. Seylinco cites Article 11.1, which states "an antidumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury" and Article 11.2 which provides "the authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive antidumping duty, upon request by any interested party which submits positive information substantiating the need for the review." See Seylinco's Case Brief at 6 and 7. Seylinco argues it has rigorously followed Department regulations and practice over the course of four consecutive periods of review (PORs) in which dozens of sales and thousands of metric tons were examined. Seylinco asserts the Department has found Seylinco dumped only a single container of honey in the 2001-2002 review period (POR1), resulting in a dumping margin of 0.60 percent. However, despite the Department's findings in POR1 Seylinco maintains it has since complied with U.S. antidumping laws and ensured its U.S. prices have been higher than its third-country market prices. See Seylinco's Case Brief at 7.

Seylinco states the Department allows revocation under 19 CFR 351.222(e)(1)(ii) on the basis of at least three PORs where subject merchandise is sold in commercial quantities. Seylinco contends it has sold at least one container (equivalent to 20,000 kilograms (kg.) of honey) in each POR since POR1. Seylinco argues petitioners even concede that honey is typically exported by container loads of drums. Seylinco maintains the record demonstrates a full container load of honey is a commercial quantity and states that a typical container load of honey would fill over 59,000 12-ounce "honey bear" jars typically sold at retail in grocery stores. See Seylinco's Case Brief at 8. As such, Seylinco claims the Department's preliminary determination that a single drum of honey does not constitute a commercial quantity is unreasonably restrictive and not supported by the record. Seylinco argues Department regulations do not even qualify commercial quantities and deems it arbitrary and capricious for the Department to determine an unspecified level of commercial quantities is now required for revocation. In fact, Seylinco points out that the Department conducts "new shipper" reviews for sales of similar quantities made of a container-full, or less of various products, and argues "the Department appears to have established an arbitrary standard, treating containers or less as bona fide sales qualifying for complete annual reviews. . . and then treating them as somehow 'noncommercial' for the purposes of revocation." See Seylinco's Case Brief at 8. Citing the preamble of the

Department's Antidumping Duties; Countervailing Duties, Final Rule (Preamble), 62 FR 27296, 27326 (May 19, 1997), Seylinco notes the legislative history of 19 CFR 351.222 indicates "it is reasonable to presume that if subject merchandise, shipped in commercial quantities, is being dumped or subsidized, domestic interested parties will react by requesting an administrative review to ensure that duties are assessed and that cash deposits are revised upward from zero." See Seylinco's Case Brief at 8. Seylinco argues petitioners by their actions acknowledge that one container is a commercial quantity because they have requested a review of Seylinco in each of the past three PORs.

Seylinco refers to the preamble of the Proposed Regulations, which states additional factors can determine commercial quantities: "{i}n deciding commercial quantities, the Department will consider natural disasters and other unusual occurrences which might affect the potential for production or exportation as factors to determining commercial quantities." See Seylinco's Case Brief at 9, citing the Preamble to Antidumping Duties; Countervailing Duties Proposed Rule, 61 FR 7308, 7320 (February 27, 1996) (Preamble to Proposed Rule). Additionally, Seylinco argues it is problematic to compare members of industry to each other because the Argentine export market is dominated by a few large exporters and maintains the Department's interpretation of commercial quantities in this case serves as a de facto bar to small and medium exporters. See Seylinco's Case Brief at 9. Therefore, Seylinco urges the Department to consider its particular company-specific circumstances which it maintains account for the relative decline in the quantities of its sales throughout both the 2002-2003 (POR2) and the 2003-2004 (POR3) reviews. Specifically, Seylinco suggests it experienced the equivalent of a "natural disaster" and other "unusual occurrences" because of certain client demands for laboratory testing which absorbed much of the company's capital, along with a contamination scare affecting Argentine honey. See Seylinco's Case Brief at 10. As a result of its situation Seylinco maintains it was unable to procure the same amount of honey in POR2 and POR3 that it had in POR1. In addition, Seylinco argues its POR1 sales were atypically high due to an overall honey shortage in the U.S. market and therefore argues it is unreasonable to compare Seylinco's POR2 and POR3 sales to its POR1 sales. See Seylinco's Case Brief at 10.

Given its experiences during POR2 and POR3, Seylinco contends the Department should weigh its 2004-2005 (POR4) sales most heavily in its final determination. Seylinco explains its POR4 sales to the United States increased due to its completion of the laboratory, along with the company's developing reputation in the United States all of which enabled it to devote more resources to honey acquisition. See Seylinco's Case Brief at 11. In fact, Seylinco insists its POR2 and POR3 sales activity was "normal" in the context of the described "unusual occurrences" because Seylinco still sold large quantities of honey to the United States (over 20,000 kgs.) in each review. Seylinco argues the Department's analysis has failed to account for Seylinco's experience in the U.S. market, contrary to the Tariff Act's legislative history. See Seylinco's Case Brief at 11. Moreover, Seylinco maintains it has proven to engage in fair trade during the three PORs at issue, and notes only one positive antidumping margin has resulted for any respondent throughout those three review periods. Seylinco states it already competes successfully against major Argentine exporters at zero deposit rates and asserts it is not dumping.

The company urges the Department to examine its overall compliance and the specific reasons for the trend in its U.S. sales with respect to revocation for these final results. As such, Seylinco requests the Department honor Article 11 of the WTO Antidumping Agreement and revoke the antidumping duty order with respect to Seylinco for these final results.

Petitioners insist that Seylinco has not met the requirements for revocation under 19 CFR 351.222 despite its claim that it has not dumped for three consecutive periods. Petitioners contend the fact that no dumping has occurred is not sufficient in itself to warrant revocation. Subject to 19 CFR 351.222(e)(1), petitioners argue a lack of dumping must occur in the context of sales that are consistently and sufficiently large (*i.e.*, in commercial quantities) for the Department to determine whether or not dumping will recur. See Petitioners' Rebuttal Brief at 3. Also, petitioners maintain the Department has acted in accordance with Article 11 of the WTO's Antidumping Agreement and note Articles 11.1 and 11.2 provide no guidance with respect to commercial quantities. In particular, petitioners maintain the Department adhered to Article 11.2 by conducting a review of the continuing need for the antidumping duty order, and with respect to Article 11.1, the Department found it not evident that the order is not necessary to counteract dumping by Seylinco because the volume of sales against which the lack of dumping has been measured was deemed too small. See Petitioners' Rebuttal Brief at 4.

Petitioners present the Department's standard for revocation as rooted in its practice and regulations, emphasizing the respondent must demonstrate it participated meaningfully in the market in each relevant POR. See Petitioners' Rebuttal Brief at 5, citing 19 CFR 351.222(b)(2)(i). As such, petitioners argue the Department has interpreted commercial quantities to mean a quantity which is not abnormally small. "In general, the Department has found that sales during a POR which, in the aggregate, are of an abnormally small quantity, either in absolute terms or in comparison to an appropriate benchmark period, do not apply a reasonable basis for determining the discipline of the order is no longer necessary to offset dumping." See Petitioners' Rebuttal Brief at 6 (citing the Department's 2003-2004 memorandum "Request by Asociation of Cooperativas Argentinas (ACA) for Revocation in the Antidumping Duty Administrative Review of Honey from Argentina," dated December 20, 2005). Although Department regulations do not define "abnormally small," petitioners note a standard has been developed on a case-by-case basis. For the instant review, petitioners aver, the Department examined Seylinco's own shipment history for the three PORs in question and that of the overall Argentine honey industry in making its determination. Petitioners maintain the Department appropriately concluded Seylinco did not ship in commercial quantities under both standards.

Petitioners state the Department normally determines commercial quantities by comparing the volume of sales in each POR to the volume the exporter shipped in the original less than fair value determination as a benchmark of the company's normal commercial behavior in a period prior to the order. However, as Seylinco only started exporting honey after the period of investigation (POI), the Department compared Seylinco's shipments to the average commercial shipments of Argentine producers reviewed during the POI as an indication of the commercial

practice of the industry prior to the order. Petitioners note the Department's analysis showed Seylinco's U.S. sales volumes during POR2 and POR3 were small in comparison to the overall quantities of honey shipped to the United States from Argentina, and thus prove uncharacteristic of the industry as a whole. Petitioners reject Seylinco's claim that as a small- or medium-sized company it should be held to a lower volume threshold and not be compared to other members of the industry whom have a larger proportion of total exports. See Petitioners' Rebuttal Brief at 11. Petitioners also state the market situation described by Seylinco was not a "natural disaster" and argue the Department should not consider Seylinco's claim as such in its analysis. Petitioners maintain the contamination scare affected all Argentine producers equally and therefore the impact on exports to the United States would exist across all exporters. Petitioners concede overall U.S. honey imports from Argentina did decline in POR2 and POR3 from POR1 levels and note that POR3 shipments were one-third of POR1 volumes. However, petitioners contend Seylinco's exports in POR3 fell to such a degree that even in light of declining honey exports due to Argentine market conditions, Seylinco's exports were not commercially normal for the period. See Petitioners' Rebuttal Brief at 11.

Further, petitioners maintain the Department found Seylinco did not ship in commercial quantities based on its own shipment history. In particular, petitioners argue Seylinco's shipments during POR2 and POR3 were not representative of the exporter's commercial activity in comparison to its POR1 shipments, and even claim POR3 shipments to be aberrational in relation to POR1. Petitioners add that while international sales of honey are made in lots of at least one ocean-going container of 20,000 kgs., a single container does not qualify as an appropriate benchmark for whether commercial quantities were sold in the honey business. See Petitioners' Rebuttal Brief at 8 and 9. Also, petitioners maintain Seylinco's shipments in POR2 and POR3 were not in commercial quantities when compared to Seylinco's larger sales volume to the United States in POR4. Petitioners argue Seylinco's low sales volumes during POR2 and POR3 enabled Seylinco to control the dumping margin which, petitioners maintain, would be difficult to sustain over multiple sales for a long period of time. Accordingly, petitioners state the Department was correct to find Seylinco's sales during POR2 and POR3 were unrepresentative of the exporter's typical commercial activity. See Petitioners' Rebuttal Brief at 10.

In conclusion, petitioners argue Seylinco's request that the Department's analysis place more weight on the company's POR4 shipment levels is contrary to 19 CFR 351.222(b)(1)(i). Rather, petitioners state the Department purposely examines a three-year period because no single POR can serve as an accurate predictor of whether an exporter will sell at less than normal value over time. Petitioners therefore assert all reasonable benchmarks show Seylinco's sales during POR2 and POR3 were not at the company's normal commercial quantities. As such, petitioners argue the Department should not revoke Seylinco from the antidumping duty order even if it were to receive a zero margin for the final results.

Department Position: We find no evidence to contradict our findings in the Preliminary Results and continue to determine not to revoke Seylinco from the order. As discussed in the

Preliminary Results and the Department's Memorandum to Richard Weible, Director, Office 7, from Maryanne Burke, Case Analyst "Request by Seylinco for Revocation in the Antidumping Duty Administrative Review of Honey from Argentina" (Revocation Memorandum), dated December 20, 2006, Seylinco requested revocation on the basis of its anticipated three consecutive years of sales at not less than normal value (*i.e.*, POR2, POR3 and POR4). To consider such a request we must determine, as a threshold matter, whether the company requesting revocation sold the subject merchandise in commercial quantities in each of the three years forming the basis of the request as required under 19 CFR 351.222(d)(1) and 19 CFR 351.222(e)(1). Although we find Seylinco has demonstrated three consecutive years of sales at not less than normal value, we disagree with Seylinco's claim that its sales to the United States were made in commercial quantities during all of the review periods at issue as required under 19 CFR 351.222(d)(1) and 19 CFR 351.222(e)(1)(ii). Seylinco is correct in pointing out that neither the statute nor the Department's regulations provide a detailed standard for determining whether sales have been made in commercial quantities. See section 751(d) of the Tariff Act and 19 CFR 351.222. However, as noted by petitioners, our determination as to whether or not sales volumes are made in commercial quantities is made on a case-by-case basis, based on the unique facts of each proceeding. The Department notes it generally uses the period of the original less than fair value investigation (*i.e.*, pre-order shipment levels) as a benchmark for a company's normal commercial behavior; however, given that Seylinco's first exports of honey to the United States were made after the imposition of the dumping order, we considered an alternative benchmark. In establishing a suitable benchmark for this proceeding we analyzed Seylinco's own pattern of shipments, as well as that of the industry as a whole in determining commercial quantities within the context of "normal commercial practice."

First, we examined Seylinco's sales for the three years at issue in comparison to its prior shipment history (*i.e.*, POR1). We found Seylinco's POR2 and POR3 shipment levels were significantly lower than its sales made during POR1, while shipments during POR4 reflected a quantity similar to its POR1 sales. As we found in the Revocation Memorandum, Seylinco did not sell merchandise in the United States in commercial quantities in POR3. See Revocation Memorandum at 4 and 5. Second, we analyzed Seylinco's shipments for the three years at issue in comparison to the Argentine honey industry as a whole. Specifically, we compared Seylinco's shipment volumes for POR2, POR3 and POR4 with the average volumes of Argentine honey exporters that participated in the Department's original less than fair value investigation. We found Seylinco's POR3 shipment levels to the United States to be considerably less than the shipments made by these exporters during the original investigation. We disagree with Seylinco that the contamination scare regarding Argentine honey and Seylinco's purported cash-flow difficulties during POR2 and POR3 can be considered natural disasters or unusual occurrences because Seylinco presented no evidence on the record substantiating these claims. During verification, Seylinco submitted on the record statistics illustrating Argentine honey exports to the United States for years 2001 through 2006. See Sales Verification Report Exhibit 3 at 2. For purposes of our analysis we have compared the 2003 statistics therein to Seylinco's POR2

shipment data as the periods closely correspond³ and find that while Argentine-wide honey sales to the United States declined 56 percent, Seylinco's shipments dropped at a much greater rate than the national trend. Similarly, we compared 2004 Argentine honey exports to the United States with Seylinco's POR3⁴ shipments which indicate the industry actually increased shipment levels by three percent between 2003 and 2004; however, Seylinco's shipments to the United States further declined for the same period. In fact, during 2003 (POR2) the honey industry recorded its lowest export levels to the United States in five years, while Seylinco experienced its lowest volumes to the U.S. market in POR3. We find these statistics merely illustrate Seylinco's shipment pattern again differs from that of the overall Argentine honey industry. These figures do not support Seylinco's claims that it experienced a natural disaster with respect to the contamination of Argentine honey because such industry statistics would reflect a similar impact among exporters. Regarding Seylinco's claims of an unusual occurrence concerning the company's limited capital, we find that Seylinco did not submit evidence on the record proving these assertions. In fact, Seylinco's decision to make improvements to its infrastructure was a deliberate and conscious business choice and as such we do not consider it unusual within the meaning of the Preamble to the Proposed Rule. Moreover, we also find shipment volumes to other markets were not affected in a like manner. Most notably, during POR3 Seylinco's sales to a certain market substantially increased from POR2, whereas for other markets, while Seylinco's sales decreased, the decline was not as significant as that experienced in the U.S. market over the same period. See Sales Verification Report Exhibit 10 at 4. We determine Seylinco's company-specific circumstances do not adequately explain the sharp decline of its shipments to the United States.

We also disagree with Seylinco's suggestion that our preliminary determination that a single container of honey is not a commercial quantity is inconsistent with our practice of reviewing sales of a container or less in new shipper reviews. The commercial quantities decision in a revocation determination is completely different from a bona fides analysis in a new shipper review. While the Department may find a small volume sale to be a bona fide transaction, in analyzing commercial quantities for purposes of revocation, the Department must be able to determine that the calculated margins are reflective of a company's normal commercial activity in the U.S. market as a whole. Sales by a firm during a POR which, in the aggregate, are of a small quantity, either in absolute terms or in comparison to an appropriate benchmark period (e.g., POR1) do not provide a reasonable basis for determining that the discipline of the order is no longer necessary to offset dumping. See Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part: Certain Pasta from Italy, 68 FR 6882 (February 11, 2003) and accompanying Issues and Decision Memorandum at Comment 1. We find sales made during POR3 to be substantially smaller than POR1, and therefore not characteristic of Seylinco's overall sales history to the United States. Also, while POR4

³ The Department's POR2 covered sales to the United States between December 1, 2002, through November 30, 2003.

⁴ POR3 covered sales to the United States between December 1, 2003, through November 30, 2004.

shipments do prove comparable to Seylinco's POR1 sales volumes, 19 CFR 351.222(d)(1) requires "before revoking an order or terminating a suspended investigation, the Secretary must be satisfied that, during each of the three (or five) years, there were exports to the United States in commercial quantities of the subject merchandise to which a revocation or termination will apply" (emphasis added). Furthermore, Seylinco's sales volume during POR3 was also not at a sufficiently high level with respect to the industry as a whole to be considered as having been made in commercial quantities. We therefore conclude that POR3 offers no basis to make a revocation determination and as such Seylinco fails to meet the requirements of 19 CFR 351.222(d)(1) and 19 CFR 351.222(e)(1)(ii).

Finally, we disagree with Seylinco's contention that not revoking the order with respect to Seylinco is inconsistent with Article 11 of the Antidumping Agreement. Our decision is consistent with the Tariff Act and our regulations, which are consistent with the Antidumping Agreement. Moreover, Article 11.1 merely states that antidumping duties shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury. It leaves to the discretion of the investigating authority the decision of how long and to what extent it is necessary to keep the duties in force to counteract dumping. Article 11.2 merely provides that the Department shall review the continued need for the duties upon request by an interested party. Seylinco made such a request, and consistent with Article 11.2, we have conducted such a review. Accordingly, for all the above reasons, as well as the reasons expressed in our Revocation Memorandum, we are not revoking the order with respect to Seylinco, consistent with the Tariff Act, our regulations and our international obligations.

Comment 3: Adverse Facts Available for Beekeeper 2

For the Preliminary Results, we calculated one average cost of production (COP) for Seylinco's honey supplier respondents for the use in the antidumping duty margin analysis. Specifically, we first calculated a simple average of the costs for the two participating beekeeper respondents, Beekeeper 1 and Beekeeper 3. See Memorandum to Neal M. Halper, Director Office of Accounting, from Margaret M. Pusey, Senior Accountant "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results - Seylinco S.A. Beekeeper Respondents (Preliminary Cost Calculation Memorandum), dated December 20, 2006 and accompanying Attachment A for the calculation of the average COP for Beekeeper 1 and Beekeeper 3. Because Beekeeper 2 failed to provide its COP information, we included a cost for Beekeeper 2 based on adverse facts available (AFA). See Preliminary Cost Calculation Memorandum and accompanying Attachment A for the calculation of the COP for Beekeeper 2 based on AFA. We then weight-averaged Beekeeper 2's COP in the calculation of the single average COP for Seylinco's honey suppliers, based on Beekeeper 2's relative quantity of honey supplied to Seylinco during the POR.

Petitioners claim that the Department's methodology of applying an AFA rate to only Beekeeper 2 in the Preliminary Results was flawed. Petitioners contend that the Department should not mix the use of a simple average and a weight-average when calculating Seylinco's costs. Petitioners

argue that the Department must abide by its sampling methodology and calculate a simple average cost using its three selected beekeepers. According to petitioners, it is incorrect for the Department to assume that the remaining population of beekeepers (*i.e.*, non-selected beekeepers) would have participated when 33 percent of the sample did not participate. Petitioners state that the Department has an established practice of calculating a simple average for selected beekeepers in Honey from Argentina.⁵ Therefore, petitioners claim it is appropriate to apply Beekeeper 2's COP based on AFA to 33 percent of Seylinco's costs since 33 percent of the sample failed. See Petitioners' Case Brief at 16.

Seylinco argues that the adverse inference assigned to its costs for Beekeeper 2 in the Preliminary Results amounts to penalization for Seylinco's inability to submit Beekeeper 2's information to the Department. Seylinco cites to Luoyang Bearing Corp. v. United States, Slip Op. 2005-03 (January 21, 2005) (Luoyang), where the court upheld the Department's position of applying partial facts available to the exporter since it acted to the best of its ability to obtain factors of production (FOP) from its suppliers. See Seylinco's Case Brief at 14 and 15. Seylinco asserts that the cooperation and participation of Beekeeper 2 in this administrative review was not within its control. Seylinco claims that the adverse inference assigned to its costs for Beekeeper 2 in the Preliminary Results, was not representative of the verified information in this review nor was it warranted given Seylinco's cooperation throughout the review. Seylinco asserts that the Department cannot draw an adverse inference against Seylinco and, as such, can only choose from the highest verified costs on the record of this review in assigning a COP to Beekeeper 2. See Seylinco's Case Brief at 15.

Petitioners refute Seylinco's argument that the Department must choose from the highest verified costs on the record of this review in determining a COP for Beekeeper 2. Petitioners note that the Department applied its statutory sampling authority in accepting costs from three of Seylinco's suppliers as a basis for determining costs. Petitioners conclude that because Seylinco is the only exporter participating in this review, using the highest verified costs on the record of this review is not appropriate. Petitioners contend that when the Department determined, under the statutory sampling authority, that three suppliers were the correct number of producers from which to obtain costs, the Department cannot accept a smaller sample (*i.e.*, Beekeeper 1 and Beekeeper 3) for purposes of these final results. See Petitioners' Rebuttal Brief at 15.

Petitioners assert that in agricultural cases the producers are just as integral to the production process as the exporter and are therefore properly considered "respondents" in the context of the proceeding. Petitioners claim that the Department's practice is to consider upstream suppliers as "interested parties" citing to Certain Tissue Paper Products and Certain Crete Paper Products from the People's Republic of China: Notice of Preliminary Determination of Sales less Than Fair Value, 69 FR 56407 (September 21, 2004) and Notice of Final Results of Antidumping Duty Administrative Review: Heavy Forged Hand Tools, Finished or Unfinished, With or Without

⁵ See Honey from Argentina: Preliminary Results of New Shipper Review, 71 FR 67850 (November 24, 2006) (New Shipper Review).

Handles from the People's Republic of China, 69 FR 55581 (September 15, 2004) and accompanying Issues and Decision Memorandum at Comment 13. Petitioners maintain that it was appropriate for the Department in the Preliminary Results to apply AFA to the non-responding beekeeper. See Petitioners' Rebuttal Brief at 16. Petitioners hold that it is critical for the Department to apply AFA to non-responding producers when exporters, not producers, are the focus of the review. Petitioners contend that if the Department does not apply AFA to non-responding producers, the Department will, as a result, reward the lack of cooperation and such action may lead to exporters conspiring with the producers for the purpose of manipulating COP data. Petitioners point out that the Department has a responsibility to apply the antidumping law in a manner that prevents the evasion of antidumping duties, citing to Tung Mung Development Co., LTD. v. United States, 354 F.3d 1371 (Fed. Cir. 2004) and the SAA at 870. Finally, petitioners cite to Appendix 1 - Glossary of Terms and the definition of facts available in the Department's antidumping questionnaire concluding that it is clear that even when other parties are at fault, facts available must be applied. See Petitioners' Rebuttal Brief at 18.

In response to petitioners' comments, Seylinco points out that Beekeeper 2 stated that its primary business was not beekeeping and therefore its costs were not representative of a typical Argentinian beekeeper. Seylinco states it requested that the Department choose another beekeeper for reporting purposes so that no claim could be made that the replacement respondent was "self-selected." Also, Seylinco points out that it requested that the Department place on the record in this review the cost information from the new shipper review so that the Department would have representative, verified information available as another alternative to determining Beekeeper 2's COP.

Seylinco refutes petitioners' argument that the Department should apply AFA to one-third of Seylinco's costs since one-third of the sample failed. Seylinco points out that the Department performed a verification of Beekeeper 1 and Beekeeper 3 and did not find any reason to suggest that Beekeeper 1 and Beekeeper 3 costs are not representative of all Argentinian beekeepers. Seylinco asserts that it cooperated to the best of its ability and that Seylinco had no ability to compel Beekeeper 2 to provide its COP information. See Seylinco's Rebuttal Brief at 5.

Department Position: We agree with petitioners, in part, that the application of AFA to Beekeeper 2, an "interested party," was correct. In regard to Beekeeper 2's claims that he is not representative of the honey producers in Argentina, we note that because Beekeeper 2 refused to participate in this review, the Department was unable to verify whether Beekeeper 2 was representative of honey producers, as we were unable to analyze any cost information relating to Beekeeper 2's business.

Due to the Department having limited resources to investigate and examine COP data from all of the producers which provided Seylinco with honey during the POR, the Department developed a methodology to calculate a reasonable COP and constructed value (CV) for the merchandise under consideration. This methodology was developed in accordance with section 777A of the Tariff Act, which states where it is not practicable to examine all known producers or exporters

in a review, the Department is given the authority to limit its examination to either: (A) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (B) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined. See section 777A(c)(2) of the Tariff Act.

The Department determined it was appropriate to select those producers that supplied the largest volume of subject merchandise to Seylinco which could reasonably be examined. Because of the large number of honey producers, and the Department's resource constraints, we selected the three largest beekeeper suppliers to Seylinco during the POR. See Memorandum to Richard Weible, Director Office 7, from the Team, regarding "Selection of Cost of Production Respondents" (Cost Selection Memorandum), dated August 24, 2006. This was consistent with prior practice in the history of this order and avoided the inherent risk in selecting small beekeepers unable to respond to our information requests. We determined that, given the inherent constraints of resources and personnel, three beekeepers was the largest number the Department was able to review. Because of concerns that respondents could potentially manipulate the choice of cost respondents we found that the selection of a replacement cost respondent was not a viable option. That is, we must prevent exporters from potentially instructing a selected supplier with unfavorable data not to respond, while holding the knowledge that a second supplier, with potentially more favorable data, would be selected in lieu of the initial cost respondent. Petitioners are incorrect in claiming that the Department must abide by a sampling methodology in accordance with section 777A(c)(2)(A) of the Tariff Act as we did not select the beekeeper respondents using a statistically valid sampling method (i.e., stratified, random, or systematic sampling). Rather, our decision to select the three beekeepers that supplied the largest volume of honey to Seylinco during the POR is in accordance with section 777A(c)(2)(B) of the Tariff Act and Department practice where we have selected cost respondents on the basis of their size and not through any statistically valid sampling procedures. See Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes from Canada, 67 FR 8781 (February 26, 2002) and accompanying Issues and Decision Memorandum at Comment 7. As such, where the Department's methodology has been to select producers representing the largest volume of subject merchandise from the exporting country, we may determine a weighted average limited to those producers.

In accordance with section 771(9)(A) of the Tariff Act, an "interested party" is a foreign manufacturer, producer, or exporter of subject merchandise. Because Beekeeper 2 produced and processed honey during the POR and then sold its honey to Seylinco who exported the honey to the United States during the POR, Beekeeper 2 is considered an interested party in this review. As a selected beekeeper respondent in this review, the Department requested cost information from Beekeeper 2. The Department received a letter of representation for Beekeeper 2 from its counsel on August 31, 2006. All correspondence from the Department to Beekeeper 2 was done through their counsel. On September 5, 2006, the Department issued its section D questionnaire. On September 15, 2006, Seylinco placed on the record a letter written by Beekeeper 2 to the Department saying it could not answer the questionnaire as Beekeeper 2 was not representative

of a typical beekeeper in Argentina. Beekeeper 2 did not submit a section D response by the October 10, 2006 deadline. Therefore the Department made a second request for Beekeeper 2's section D response on October 12, 2006, requesting that Beekeeper 2 report its "cost of production directly (and not on behalf of Seylinco) to the Department." Beekeeper 2 did not submit a section D response per the Department's second request by the October 20, 2006 deadline. The Department received on October 20, 2006 a letter from Beekeeper 2's counsel and an attached letter submitted by fax from Beekeeper 2 to Seylinco dated October 10, 2006, stating that Beekeeper 2's business was not representative of a beekeeper in Argentina. On November 22, 2006, the Department requested for the third time Beekeeper 2 submit a section D response to the Department. On December 6, 2006, Beekeeper 2's counsel submitted a letter stating that a section D response was not being filed with the Department for Beekeeper 2 and that they were withdrawing their representation of Beekeeper 2.

Pursuant to section 776(a) of the Tariff Act, the Department shall use the facts otherwise available in reaching a determination if necessary information is not available on the record, an interested party withholds information that has been requested by the Department, an interested party fails to provide requested information by the deadlines, or an interested party significantly impedes the proceeding, among other things. The failure of Beekeeper 2, an interested party, to provide a section D response falls within section 776(a) of the Tariff Act for all of these reasons. Thus the use of facts available is appropriate. Further, pursuant to section 776(b) of the Tariff Act, if the administering authority finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference that is adverse to the interests of that party in selecting among the facts otherwise available. We find that Beekeeper 2 failed to act to the best of its ability because it failed to use its maximum efforts to provide such information. Indeed, it simply refused to provide the information. Accordingly, in using the facts otherwise available, we are applying an inference that is adverse to Beekeeper 2. In calculating Beekeeper 2's AFA COP the Department, in accordance with section 776(b) of the Tariff Act, relied on information derived from the petition. Although Seylinco placed on the record the COP information from the New Shipper Review, the COP information from the 1999 Gestion Apicola industry study for March of 1999 when inflated represented the highest COP on the record of this proceeding. Thus, we continue to use the 1999 Gestion Apicola study information for March 1999 for determining AFA for Beekeeper 2's COP. See Notice of Final Results of Antidumping Duty Administrative Review, and Final Determination to Revoke the Order in Part: Individually Quick Frozen Red Raspberries from Chile, 72 FR 6524 (February 12, 2007) and accompanying Issues and Decision Memorandum at Comment 8.

Seylinco's characterization of the facts surrounding Luoyang, Slip Op. 2005-03, is misleading. In the TRB Preliminary Results⁶ for the 1998-1999 review, the Department, in determining FOP

⁶ Notice of Preliminary Results of the 1998-1999 Administrative Review, Partial Recission of the Review, and Notice of Intent to Revoke Order in Part: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China, 65 FR 41944 (July 7, 2000).

for Premier, a reseller, used the following combination of information available on the record. First, the Department used the FOP that Premier obtained from three of its seventeen suppliers. Second, the Department used as facts available, FOP information on the record for models produced by other manufacturers which did not supply Premier during the POR but which manufactured the same models sold to Premier. For the remaining models where no FOP information was available, the Department relied on facts available with an adverse inference. The same methodology for determining Premier's FOP was used for the TRB Final Results.⁷ In the TRB Final Results, we rejected the petitioner's argument that we should apply total AFA to all of Premier's U.S. sales, as opposed to the partial AFA we applied in TRB Preliminary Results. The United States Court of International Trade (CIT) in Luoyang found that Commerce's refusal to apply AFA to all of Premier's sales was reasonable and in accordance with the law. The CIT "ordered that Commerce's determination to apply adverse facts available to only some of Premier's United States sales is reasonable and supported by substantial evidence." See Luoyang, Slip Op. 2005-03 at 20. Seylinco is arguing that it should not be penalized for Beekeeper 2's refusal to submit information since the CIT upheld the Department's position of applying partial AFA to the exporter in Luoyang since that exporter acted to the best of its ability to obtain FOP from its suppliers. In fact, the CIT sustained the use of AFA for the remaining models where no FOP information was provided by the suppliers. It rejected the use of total AFA for all of that exporter's sales. In this review, we are likewise applying partial AFA for a supplier's failure to submit information. As such Luoyang supports our decision in this case.

In calculating a single COP for Seylinco, the exporter, the Department used a simple average of Beekeeper 1 and Beekeeper 3's costs and applied the resulting COP to Beekeeper 1, Beekeeper 3, and all non-selected beekeepers. We applied AFA only to Beekeeper 2 based on its relative quantity of sales of honey to the exporter. The Department finds that it is not appropriate to apply AFA to non-selected beekeepers in calculating a single COP as non-selected beekeepers had no failure to cooperate in the context of this review. Thus, petitioners' assertion that the Department apply AFA to one-third of Seylinco's costs is unjustified.

Comment 4: Beekeeper Feed Costs

For the preliminary results, the Department applied as facts otherwise available the higher of each beekeeper's reported bee feed costs or an imputed feed amount calculated using a standard per-kilogram bee feed cost from the publicly available 1999 Gestion Apicola industry study. Petitioners claim the study assumes a 90 kg. per hive yield to calculate its per kilogram feed cost; however, petitioners point out the beekeeper respondents did not achieve yields of this level during the cost reporting period. Therefore, petitioners argue that in the final results the feed

⁷ Notice of Final Results of the 1998-1999 (Twelfth) Administrative Review, Partial Recission of the Review, and Determination Not to Revoke Order in Part: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China, 66 FR 1953 (January 10, 2001) and accompanying Issues and Decision Memorandum at Comment 31 and 32.

costs from the 1999 Gestion Apicola study should be adjusted to reflect the actual yields experienced by the beekeeper respondents. See Petitioners' Case Brief at 17.

Seylinco claims the adjustments made by the Department to its verified beekeepers for the Preliminary Results were unwarranted and amounted to an adverse inference. Seylinco points out that the Department verified that Beekeeper 1 used corn syrup for feed⁸ and Beekeeper 3 used sugar mixed with water. Seylinco contends that the Department should use the bee feed information on the record for Beekeeper 1 to calculate an adjustment to Beekeeper 3 bee feed costs instead of relying on the 1999 Gestion Apicola study which, Seylinco maintains, is outdated and highly inflated. See Seylinco's Case Brief at 13. Seylinco suggests that the Department determine Beekeeper 3 feed costs by using Beekeeper 1 actual bee feed costs and applying the ratio of number of hives Beekeeper 3 has in comparison to the number of hives of Beekeeper 1. Alternatively, Seylinco argues if the Department insists on using the 1999 Gestion Apicola study, then the Department must use the same kilograms of honey production estimated in the study and add it back to the kilograms of honey produced by Beekeeper 3. See Seylinco's Case Brief at 14.

Petitioners maintain the Department properly used the 1999 Gestion Apicola study as a benchmark. Petitioners contend that using the 1999 Gestion Apicola study as a benchmark is not an adverse inference as the benchmark is the only evidence on the record for bee feed costs in the instant review. Petitioners cite to Section I of the Preliminary Cost Calculation Memorandum regarding the beekeepers' limited source documents on bee feed. Also, petitioners state Seylinco made a proprietary statement in its case brief that supports the use of the 1999 Gestion Apicola study as a benchmark for bee feed costs.

Seylinco objects to petitioners' request for the Department to use the highest yield from the 1999 Gestion Apicola study when calculating bee feed costs. Seylinco claims using the yield from the 1999 Gestion Apicola study is incorrect because the yield in the study includes both nucleus and honey and overstates the bee feed costs per hive. Seylinco states that if the Department makes an adjustment to bee feed costs then the Department should use the feed costs of 2.56 Argentine Pesos (AP) per hive from the 1999 Gestion Apicola study. Seylinco suggests that if the bee feed costs per unit of input of 2.56 AP per hive from the 1999 Gestion Apicola study is inflated, using the wholesale price index to account for high inflation in Argentina, to June 2005 the result is a bee feed cost per unit of input of 6.23 AP per hive. Seylinco claims that by using this figure as a benchmark, Beekeeper 1's reported bee feed costs are overstated. See Seylinco's Rebuttal Brief at 6.

Department Position: We disagree with Seylinco that the Department should rely on the beekeepers' reported feed costs without comparison to a benchmark. Similar to previous reviews, the beekeeper respondents had minimal to no supporting documentation related to bee

⁸ See Memorandum to Neal Halper, Director Office of Accounting, from Margaret Pusey, regarding "Verification of the Cost Response of Beekeeper 1 in the Antidumping Review of Honey from Argentina" (Beekeeper 1 Cost Verification Report), dated December 20, 2006 at 9 and Exhibit 2 page 32.

feeding consumption rates and costs.⁹ Therefore, consistent with prior reviews, the Department used an alternative public source as a benchmark to determine whether bee feed costs were appropriately reported for each beekeeper. We also disagree with Seylinco that the 1999 Gestion Apicola study is adverse. This study reflects the actual experience of numerous beekeepers of varying sizes and efficiencies of operation in Argentina. We did discuss at verification with the beekeepers the methods used for feeding the hives and obtained a copy of an invoice for corn syrup used by Beekeeper 1 during the POR. The Department did not find during verification any supporting documentation maintained by either beekeeper for the quantity or value of their bee feed consumption during the POR.¹⁰ Although Seylinco claims the reported bee feed costs for its beekeepers were good faith estimates based on industry standards for average bee feed consumption during the cost reporting period,¹¹ these estimates cannot be tied to consumption records of the respective beekeepers or other verifiable sources. Therefore, the Department must look to other representative information on the record in this review for benchmarking the reported estimated bee feed costs.

We disagree with petitioners that the bee feed costs from the 1999 Gestion Apicola study should be altered to account for the beekeepers' actual yield loss experience for the final results. Petitioners claim the 1999 Gestion Apicola study, the public source used as the benchmark, assumes a 90 kg. yield when calculating the per-kg. feed cost. However, contrary to their claim, the costs compiled by the study are based on the production experience of a sundry of Argentine operations with varying numbers of hives and yields. In fact, rather than using a single 90 kg. per hive yield, the per-unit costs from the study are derived using per hive honey yields that range from 45 kg. to 90 kg. per hive.

The Department has an established practice in this proceeding of calculating bee feed costs based on kgs. of output of honey, not a per hive figure as advocated by Seylinco. Accordingly, we disagree with Seylinco that the bee feed cost per-unit of input (i.e., hive) stated in the 1999 Gestion Apicola study of 2.56 AP per hive and inflated to 6.23 AP per hive should be used for the bee feed benchmark. The amount and type of feed given to a hive during the winter months has an effect on the yield of the honey produced during that growing season. Also, the study takes into account the different methods of feeding the bees (e.g., a mixture of sugar and water or honey). As beekeeper yields and actual feeding costs are closely intertwined due to the fact that beekeepers often feed the bees honey produced, it is important that we use the same population of beekeepers for determining feed costs and yields in deriving a per unit feed benchmark. Thus, the feeding cost figures and the related yields from the study are representative of the varying

⁹ See Beekeeper 1 Cost Verification Report at section I.2. See also Memorandum to Neal Halper, Director Office of Accounting, from Margaret Pusey, regarding "Verification of the Cost Response of Beekeeper 3 in the Antidumping Review of Honey from Argentina" (Beekeeper 3 Cost Verification Report), dated December 20, 2006 at section I.2.

¹⁰ See Beekeeper 1 Cost Verification Report at 9.

¹¹ See Seylinco's section D questionnaire response, dated October 10, 2006 at D-17.

experiences of Argentine honey producers and we find that the study is a reasonable benchmark for bee feed costs for Beekeeper 1 and Beekeeper 3. Therefore, we have not adjusted the methodology employed in the preliminary results for determining the appropriateness of the reported feed costs in these final results.

Comment 5: Beekeeper Drum Costs

Petitioners claim the Department should not accept Beekeeper 1's reported drum costs because they are understated. Petitioners argue that Beekeeper 1 estimated its used drum purchase price and that its estimated used drum purchase price was not supported by information contemporaneous with the POR. Petitioners contend the Department should adjust Beekeeper 1's drum costs using Beekeeper 3's drum purchase price as a benchmark. Petitioners maintain that Beekeeper 3's drum purchase price was supported by documentation and verified. See Petitioners' Case Brief at 19.

Seylinco refutes petitioners' argument that the Department should use Beekeeper 3's drum purchase price as a benchmark for adjusting Beekeeper 1's reported drum costs. Seylinco notes that Beekeeper 1 purchased used drums and had them refurbished while Beekeeper 3 purchased new drums. Seylinco argues it is not reasonable to adjust Beekeeper 1's drum costs by using the price for new drums even if the new drum purchase price is supported by documentation during the POR. Seylinco claims Beekeeper 1 used a conservative estimate when reporting its drum cost to the Department and that no adjustment to Beekeeper 1's drum cost is necessary for the final results. See Seylinco's Rebuttal Brief at 7.

Department Position: The Department agrees with Seylinco that no adjustment to Beekeeper 1's drum cost is required for the final results. During the POR, Beekeeper 1 purchased used drums and had them refurbished¹² while Beekeeper 3 purchased new drums. At verification we noted that Beekeeper 1 had documentation for the costs of the refurbishment of the used drums but no documentation for the purchase of the used drums.¹³ We disagree with petitioners that we should use Beekeeper 3's drum costs as a benchmark for Beekeeper 1's drum costs because the drums are not of the same quality (*i.e.*, new vs. used). Because the drums purchased by Beekeeper 1 and Beekeeper 3 are not of the same quality, the cost per-kg. of output for Beekeeper 1's used drums was less than Beekeeper 3's cost per-kg. of output for new drums. As costs compiled by the 1999 Gestion Apicola study are based on numerous beekeepers of varying sizes and sophistication, presumably the drum costs include a mix of new and used drum purchases. Therefore, we consider the 1999 Gestion Apicola study a more appropriate benchmark to assess the reasonableness of Beekeeper 1's reported used drum cost.

We analyzed the drum cost reported by Beekeeper 1 against the inflated drum costs from the

¹² See Beekeeper 1 Cost Verification Report at 14.

¹³ See Beekeeper 1 Cost Verification Report at 14 and 15.

1999 Gestion Apicola study and found Beekeeper 1's reported drum costs were reasonable. For the final results, we have continued to calculate Beekeeper 1's cost of production using its reported drum costs.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting the margin calculation accordingly. If these recommendations are accepted, we will publish the final results of the review and the final weighted-average dumping margin for Seylinco in the Federal Register.

AGREE _____

DISAGREE _____

David M. Spooner
Assistant Secretary
for Import Administration

Date