

April 29, 2010

MEMORANDUM TO: Ronald K. Lorentzen  
Deputy Assistant Secretary  
for Import Administration

FROM: John M. Andersen  
Acting Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Issue and Decision Memorandum: Administrative Review of Honey from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission of Review, in Part

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**SUMMARY:**

We have analyzed the case and rebuttal briefs of interested parties in the seventh administrative review of the antidumping duty order on honey from the People's Republic of China ("PRC"). As a result of our analysis, we have not made changes to Seventh Administrative Review of Honey from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Intent to Rescind, In Part, 74 Fed. Reg. 68249 (December 23, 2009) ("Preliminary Results") by the U.S. Department of Commerce (the "Department"). We recommend that you approve the positions described in the "Discussion of the Issue" section of this Issues and Decision Memorandum. Below is a discussion of the issue in this antidumping duty administrative review for which we received comments and rebuttal comments from interested parties:

**DISCUSSION OF THE ISSUE:**

**Company Specific Issue**

Comment 1: Whether Dongtai Peak's Sales Were Bona Fide

- a. Timing of POR Sales
- b. Price of Sales
- c. Quantity of Sales
- d. Business Practices of U.S. Customers

## Discussion of the Issues

### BACKGROUND

The merchandise covered by the order is honey as described in the “Scope of the Order” section of the Final Results.<sup>1</sup> The period of review (“POR”) is December 1, 2007, through November 30, 2008. In accordance with section 351.309(c)(ii) of the Department’s regulations, we invited parties to comment on our Preliminary Results.

On January 21, 2010, the Department received a case brief from Dongtai Peak Honey Industry Co., Ltd. (“Dongtai Peak”). On February 4, 2010, the Department received a rebuttal brief from the American Honey Producers Association and the Sioux Honey Association (“Petitioners”). On February 17, 2010, the Department sent Dongtai Peak a letter requiring it to remove new factual information from its brief, pursuant to section 351.301(b)(2) of the Department’s regulations. Subsequently, Dongtai Peak resubmitted its case brief on February 24, 2010. On March 30, 2010, the Department sent Dongtai Peak another letter, rejecting Dongtai Peak’s resubmitted case brief which continued to contain new information. On April 2, 2010, Dongtai Peak resubmitted its case brief.

#### **Comment 1: Preliminary Finding That Dongtai Peak’s Sales Were Not Bona Fide**

##### a. Prices of Dongtai Peak’s Sales

Dongtai Peak contends that the prices of its sales were normal and reasonable. Dongtai Peak argues that in the price comparison process, the Department failed to follow the process outlined in Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States, 366 F. Supp. 2d 1246 (CIT 2005) (“TTPC”), and should have compared its sale price to its third-country sales.

Additionally, Dongtai Peak states that the entry data from which the average unit values (“AUVs”) are calculated only represent average entered values, not average sale prices. According to Dongtai Peak, it is common for there to be significant markups from the transfer price AUVs of *entries* to the prices of arms-length wholesale or retail *sales*. Therefore, Dongtai Peak states, the relevant comparison for determining a bona fide sale is to compare an arms-length *sale* to the first unaffiliated customer, not entry AUVs. Dongtai Peak, thus, argues that the Department’s comparison of Dongtai Peak’s POR sales to the POR customs entry AUV data is not evidence that the price of Dongtai Peak’s POR sales were not reflective of its normal pricing practices or commercial transactions.

Dongtai Peak also contends that the type of honey it sold during the POR commands a different price than other types of honey sold during the POR. Dongtai Peak argues that the Department is wrong to disregard the article Dongtai Peak submitted to support its argument that its price was reasonable only because Dongtai Peak did not indicate that the prices in the article were for the

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<sup>1</sup> See Administrative Review of Honey from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission of Review, in Part, published concurrently with this memorandum (“Final Results”).

U.S. market. According to Dongtai Peak, the Department has not provided a rule or standard for not considering the article, and therefore it is depriving Dongtai Peak from legally sufficient notice or time to respond to the Department's preliminary conclusion about its prices. Additionally, Dongtai Peak argues that since honey is a globally produced and traded commodity, the publically available price information on the record concerning different grades of honey is pertinent to the analysis of price variations between different grades. Dongtai Peak states that this is sufficient to show the prices of Dongtai Peak's U.S. sales were bona fide, whether or not the price information was exclusive to the U.S. market.

Further, Dongtai Peak states that it does not possess the resources or market research capabilities to obtain market research data from professional consultants or other sources. Dongtai Peak argues that finding publically available price information for specific types of honey is difficult, much of it being its competitors' proprietary information, and the Department's requirement that its information be "for the U.S. market" is an undue burden. Dongtai Peak argues that it has put sufficient evidence on the record for the Department to find that its POR sales prices were in line with the market for such honey, and that comparing its sales with what Dongtai considers to be manipulated prices is improper and should not be included in the final result.

Dongtai also states that the CBP data that the Department based its price comparison on is not accurate. Dongtai argues that the CBP database contains clerical errors. Therefore, Dongtai Peak advocates that the Department compare Dongtai Peak's prices with the prices of the same type of commodity for price comparison purposes, but notes that there is no unique HTSUS code for this specialty type of honey. Dongtai Peak argues that a substantial number of entries for the HTSUS code used for the subject merchandise during the POR were for sales of a more common type of honey, rather than Dongtai Peak's honey, making the AUV for all entries under that HTSUS number lower in comparison to Dongtai's sales prices. Therefore, according to Dongtai Peak, this comparison would not be indicative of non-*bona fide* sales, as was the case in a recent garlic new shipper review.<sup>2</sup> Dongtai Peak cites the Department's decision in Garlic from the PRC, which states that the comparison of the subject merchandise, single clove garlic in that case, under the AUV for the HTSUS number might not be meaningful for *bona fide* analysis, since it contained substantial entries for multi-clove garlic, which had a significantly lower price than single clove garlic.<sup>3</sup> Dongtai Peak cites Garlic from the PRC to demonstrate that in the past, the Department has recognized that certain HTSUS price comparisons might not be accurate, when comparing specialty products to non-specialty products that have entered under the same HTSUS code. In the current review, Dongtai Peak argues, there is no other U.S. price for the subject merchandise to compare its price to, and consequently, the Department should not conclude Dongtai Peak's sales during the POR were non-*bona fide* because of the price differential.

Dongtai Peak states that when there is no U.S. sales basis to conduct a price comparison, the Department should look at the respondent's sales to third countries for comparable prices. Dongtai points to TTPC where the Department looked to a third country for glycine price comparisons, after it found the respondent's sales prices were not in line with other PRC glycine

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<sup>2</sup> See Fresh Garlic from the People's Republic of the PRC: Final Results and Final Reversion, In Part, of New Shipper Reviews, 74 FR 50,952 (October 2, 2009) ("Garlic from the PRC").

<sup>3</sup> See id.

producers in the U.S. market. Dongtai Peak urges the Department to follow TTPC in the final determination.

If the Department continues to compare Dongtai Peak's sales prices under the current HTSUS number, Dongtai Peak argues that it should disregard the lowest prices because they do not represent normal businesses practices and are likely the result of dumping. Dongtai Peak notes that because none of the largest exporters cooperated for this review, the Department never calculated an antidumping rate for them in this review. However, Dongtai Peak states, the Department did calculate an antidumping duty rate in an administrative review prior to this one.<sup>4</sup> Dongtai Peak notes that in the prior review, all the sales were made to fixed importers and do not accurately reflect market prices, and thus comparing those "aberrational" low prices to Dongtai Peak's POR sales prices would be inconsistent with the Department's practice, and not in line with the law. According to Dongtai Peak, the only other exporter that made a sale during the POR was also not a *bona fide* sale for the price comparison, and therefore there were no comparable sales during the POR.

In conclusion, Dongtai Peak maintains that no comparable prices exist, and thus, according to TTPC, the Department is required to compare Dongtai Peak's sales with its "own sales, whether these sales made to third country markets or to the United States after the POR." Dongtai Peak argues that it sold honey to a third country during the POR, the prices of which are already on the record, and therefore, the Department should use these prices in the final results as they are the best information available.

Petitioners argue that Dongtai Peak's statements that the AUVs of entries are significantly marked up for the final sales value are unsupported in the record. Further, Petitioners maintain that even if there was evidence that the entered values were marked up before sale, there is no evidence that these sales prices would be substantially higher than average entered values, which would have to be the case to make the comparisons by the Department inappropriate. Petitioners state that during the POR, the entered value of Dongtai Peak's sales would be an apples-to-apples comparison to the values of other entered values of Chinese honey in the same HTSUS category. Petitioners also state that this type of comparison is consistent with the Department's established practice as outlined in the Memorandum to James C. Doyle from Catherine Bertrand, Antidumping Duty Administrative Review for Dongtai Peak Honey Industry Co. Ltd. ("Prelim *Bona Fides* Memorandum") at 6. Petitioners argue that the other imports of this type of honey from the PRC during the POR provide a good comparison because they represent the prevailing price of that honey from China at that time. Petitioners conclude by stating that the Court of International Trade has consistently upheld this practice.<sup>5</sup>

Petitioners also maintain that there is no evidence on the record supporting Dongtai Peak's claim that the type of honey it sold demanded a different price than other imported honey. Petitioners reiterate the Department's finding that the article Dongtai Peak put on the record was not specific to the types of honey Dongtai Peak sold, nor was it specific to the U.S. market. Further,

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<sup>4</sup> See Honey from the People's Republic of the PRC: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 74 FR 796 (Jan. 8, 2009).

<sup>5</sup> See e.g., Hebei New Donghua Amino Acid Co. v. United States, 29 C.I.T. 603, 611-614 (Ct. Int'l Trade 2005).

Petitioners note that the Department found no evidence that the other honeys in the HTSUS category were different from Dongtai Peak's honey. Petitioners state that after several requests Dongtai failed to produce evidence that its honey demanded a different price from other honeys in the United States, and while it showed it paid a different price for this type of honey than other types, those were non-market economy prices and therefore the Department was unable to rely on them. Petitioners also argue that the Chinese export price quote Dongtai Peak submitted had nothing in it to show that it was for the U.S. market. Petitioners maintain that Dongtai Peak's argument that the Department did not clearly articulate a standard for disregarding the evidence it provided is incorrect. Petitioners state that the Department clearly asked Dongtai Peak for specific information about the U.S. prices, but that Dongtai responded with general information which it could not show was applicable to the U.S. market or its specific honeys. Further, Petitioners argue that the global nature of the honey market is not sufficient to support Dongtai's claim that the general information it provided on honeys demonstrates the price it sold its honey for in the United States was reasonable. Petitioners maintain that simply because honey is globally produced and marketed does not mean the article Dongtai Peak provided was applicable to the types of honey it sold in the U.S. market. Additionally, Petitioners argue that Dongtai Peak's "small" size does not mean it does not have to provide evidence to show the bona fides of its sales, and that it has the same burden as any other respondent or petitioner.

Regarding the CBP database, Petitioners maintain that there is no evidence of any problem within the database. Petitioners state that the data the Department relied on matches that of the entry package documents, including Form 7501 submitted by the broker, importer and Dongtai Peak.

Petitioners reject Dongtai Peak's claim that because the HTSUS subcategory in question "probably" contains other types of honey, it should not be used to determine whether the price for its type of honey is reasonable. Petitioners differentiate the present case from Fresh Garlic since in this case there is no record evidence showing that there is a significant difference in the prices of various types of honey imported into the United States under the HTSUS number in question, where as in Fresh Garlic the parties conceded there were two different types of products with different values. Additionally, Petitioners cite the Department's finding that the record does not show the price charged by Dongtai Peak was justified by any differences in the type of honey it sold. Petitioners also state that there is no evidence in the record to support Dongtai Peak's claim that the range of values in the import database for the honey imports is evidence that there was a difference in price for different types of honey, or that Dongtai Peak's honey was not priced in a commercially reasonable fashion.

Regarding Dongtai Peak's argument that under TTPC the Department is required to look at third country prices when there is not a reliable domestic market benchmark, Petitioners maintain that the domestic market benchmark used by the Department has not been discredited. Therefore, Petitioners state, there is no reason to use Dongtai Peak's third country prices as a benchmark for its sales in the United States. Petitioners argue that even if the accuracy of the CBP database was called into question, the appropriate benchmark would not be third country sales by Dongtai Peak, but rather U.S. sales relating to the U.S. importer, not third country sales. Petitioners argue that the import prices' of Dongtai Peak's U.S. importer during the POR is another domestic benchmark which shows that the price charged by Dongtai Peak was not commercially

reasonable. Further, Petitioners maintain that even if Dongtai Peak's prices to third countries are considered, they do not validate Dongtai Peak's U.S. prices.

Petitioners conclude that based on all the evidence and looking at the normal business practices for the U.S. market by Dongtai Peak's importer and other exporters from the PRC, Dongtai Peak's sales were not priced in a commercially reasonable manner. Therefore, Petitioners state, the Department correctly found that the sales in question were not *bona fide*.

#### b. Quantity of Sales

Dongtai contends that the quantity of its sales were commercially reasonable. Dongtai Peak maintains that the commercial reasonableness of a transaction is based on the context in which it was made. In this case, Dongtai Peak states, the sales were the first purchases of honey by its U.S. customer. Dongtai Peak argues that since the customer was just entering the market, it would have been reasonable for it to purchase smaller quantities. However, Dongtai Peak maintains that the amount in question was commercially reasonable in this situation, considering either the customer involved or the market conditions generally, and there is no evidence on the record to the contrary. Dongtai Peak posits that the entries made by other PRC exporters were likely for mass, multiple container sales, for fixed prices and quantities, and not relevant for determining the commercial reasonableness of its sales. According to Dongtai Peak, the relevant sales for bona fides analysis are those to the first U.S. customer. Finally, Dongtai Peak states that the maximum weight of a truck-borne container under California law is 20,000kg, and the amount of its honey and packaging would be close to that limit.

Petitioners argue that Dongtai Peak produces no facts to support its claim that the quantity of its sales were reasonable. Petitioners maintain that Dongtai Peak only states that the amount it shipped was reasonable, without comparing it to any benchmark, while the Department compared the quantity to other honey entries from the PRC during the POR as the benchmark. Further, Petitioners state there is no evidence on the record to support Dongtai's argument that the average entry size is irrelevant for measuring the reasonableness of the quantity because Dongtai Peak's entry was for a single sale, while the others "likely involved" multiple sales within a single entry.

#### c. Business Practices of U.S. Customers

Dongtai Peak argues that the Department did not present evidence indicating that the fact that Dongtai Peak's first U.S. customer was newly established before its first purchase negotiations was "atypical" for either U.S. honey importers or U.S. importers generally. Dongtai Peak maintains that it is normal for new companies to quickly seek out new business. Dongtai also states that the expiration of its U.S. customer's registration with the State was caused by an oversight by the customer's independent accounting firm, and was an inconsequential bureaucratic formality. If the Department determines that a transaction is unacceptable because the customer was not registered in good standing, Dongtai Peak says the Department can still use other transactions that were made in good standing for this review. According to Dongtai Peak, it is not the Department's practice to penalize respondents for minor oversights of their U.S. customers, and being that Dongtai Peak asserts that the Department found Dongtai Peak's sales

to its U.S. customer to have been made at arm's-length, the customer's oversight should not be relevant and not render the sales non-bona fide.

Although Dongtai Peak's U.S. customer purchased honey from a third country at a lower price, Dongtai Peak maintains that that purchase was for a honey of a different type, and was made at a different time when market prices were relatively low for such honey. Dongtai Peak reiterates its claim that honey prices can vary greatly among different types, with color and floral source being two factors shaping price. Dongtai Peak argues that the qualities of its special honey contribute to the price differential to that of other white honeys, such as that between the honey it sold to its U.S. customer and the honey the customer bought from a third country.

According to Dongtai Peak, the Department's finding that the non-reimbursement statement submitted by the customer indicated the wrong time period was due to the form statement which was prepared by the U.S. customer's customs broker. Dongtai Peak states that this form was accepted by U.S. Customs prior to its release of entry to the customer.

In regard to the Department's finding that Dongtai Peak's test results for antibiotics did not meet the U.S. Food and Drug Administration's ("FDA") zero percent residual tolerance requirement, Dongtai Peak states that there is nothing in the record indicating that the FDA found antibiotics in its honey. According to Dongtai Peak, its testing equipment is only capable of producing a "no more than" result, which includes zero content of antibiotics, which U.S. Customs and FDA have accepted for years. Dongtai Peak maintains that the FDA itself is not capable of a result of zero content for those antibiotics, and U.S. Customs accepts accuracies of less than zero at the port. Dongtai Peak argues it would be unreasonable for it to be required to use equipment more precise than what U.S. Customs mandates. Dongtai Peak states that it maintains a zero tolerance policy for antibiotics usage from its raw honey suppliers. According to Dongtai Peak, its customer knew of its zero tolerance policy, had seen how tightly Dongtai Peak controlled the quality of its honey, and therefore had no doubt that the honey would meet the U.S. standard.

Finally, Dongtai Peak maintains that it is standard practice in the honey industry to use premium honey to enhance the flavor of ordinary honey. Dongtai Peak argues that many other industries use additives to enhance taste of products.

In conclusion, Dongtai Peak requests that the Department reconsider its preliminary findings that Dongtai Peak's POR sales were non-bona fide. Dongtai Peak asks the Department to calculate what it considers a fair dumping margin for the administrative review's final results.

Petitioners note that the importer was incorporated on August 14, 2007, but let its registration lapse on December 1, 2008, according to information placed on the record by the office of the Secretary of State of the State of Washington. Petitioners argue that such mistakes are not normal, and point to a business set up to avoid an antidumping order. According to Petitioners, the Department is not "penalizing" Dongtai Peak for minor oversights, but rather evaluating the evidence in the context of all the other information on the record to conclude that the sales were not bona fide.

Petitioners also state that Dongtai Peak's sales were atypical when compared to Dongtai Peak's importer, NG Purchasing Group Inc.'s ("NG Purchasing") other individual import purchases as well as atypical of all imports of this type of honey from the PRC. Petitioners argue that there is no evidence on the record to support Dongtai Peak's claims that the product purchased from other sources were for a different type of honey purchased at a time when prices were lower. Additionally, Petitioners state that the third country purchases by NG Purchasing were during the same POR, and there is no evidence in the record to show there was any price change during the POR, and thus none to explain the price difference observed. Petitioners also maintain that there is no evidence on the record that the honey from third countries was a lower quality, that Dongtai Peak's "special honey" had differences to account for price differences, or credible evidence that Dongtai Peak's honey commands a premium over the other honeys which NG Purchasing bought from other sources.

Petitioners state the Department was correct to question whether Dongtai Peak's reimbursement statement was completed according to the CBP's requirements. Petitioners support the Department's view that NG Purchasing's failure to properly file the documents needed to be a business in good standing in the state where it did business, or to comply with the CBP's reporting requirements for products subject to antidumping duties is evidence that the transactions in question were atypical for those in the normal honey industry trade.

Regarding the issue of antibiotics, Petitioners argue that Dongtai Peak's claim that its honey contains no antibiotics is not borne out by the record. Additionally, Petitioner cites the Department's questioning of whether a legitimate importer of honey from the PRC would accept Dongtai Peak's level of certification of antibiotics in its products in light of the PRC's history of shipping "adulterated honey."

Petitioners argue that Dongtai Peak's argument that it is normal industry practice to use premium honey to enhance normal honey is not supported by evidence on the record and the opposite is actually the case. Further, Petitioners argue that it would make no economic sense to blend Dongtai Peak's type of honey with other varieties of honey. Petitioners state that the evidence placed on the record by Dongtai Peak that shows why certain types of honey are valuable shows the unlikelihood of such a practice being commercially reasonable, and does not support a finding of the sales being *bona fide*.

Finally, Petitioners argue that while Dongtai Peak's arguments are focused on each of the individual findings made by the Department, the Department relied on seven separate findings which together provide enough evidence to find that the sales in question were not *bona fide*. Petitioners assert that Dongtai Peak has not provided any argument that undermines the Department's collective analysis. Further, Petitioners state that the Department should again find that Dongtai Peak's sales were not *bona fide*, and should rescind the new shipper review and order that Dongtai Peak's entries be liquidated at the entered rates.

#### d. Timing of Dongtai Peak's Sales

Dongtai Peak states that the timing of its sales were reasonable and that it did not have to make its sales of subject merchandise at the end of the POR in order to receive a low antidumping rate.

Dongtai Peak maintains that the timing of the sales had no relevance to its trying to receive a lower rate, and that the Department has not shown any evidence to the contrary. Dongtai Peak argues that the timing of its sales are dependent on the market, and due to potentially high antidumping duties on honey from the PRC, many U.S. customers choose not to buy from the PRC if they can buy from another source. Additionally, according to Dongtai Peak, U.S. companies only buy honeys from the PRC which are hard to find domestically or from other countries. Dongtai Peak states that the honey it sold during the POR is usually harvested in the late spring, and the U.S. market is normally sold out of this type of honey by the end of autumn, which Dongtai Peak asserts, explains why its sales were close to the end of the POR. Dongtai Peak argues the timing of its sales were normal, supported by the case record, and there is no evidence that the sales were abnormal.

Petitioners argue that Dongtai Peak's sale showed a pattern that was not consistent with normal business considerations and that the timing was not coincidental. Petitioner's cite all of Dongtai Peak's sales, and argue that the pattern does not demonstrate a set of *bona fide* sales, but rather a series of sales which were rushed to fit the administrative process, not normal commercial considerations. Additionally, Petitioners state that there is no evidence on the record to show that the kind of honey sold by Dongtai Peak is harvested in the late spring, that these varieties are sold out in the United States by late autumn, or that China is one of a few sources for these honeys. Petitioners point to the record to show that there were a number of entries for this type of honey from the PRC during the POR.

Petitioners argue that the Department is correct in viewing the timing of Dongtai Peak's sales against the entire record. Further, Petitioners state that the Department could see anomalies not just in Dongtai Peak's POR sales, but also in the entire history of Dongtai Peak's U.S. sales. Petitioners cite abnormalities in the size and price among other factors in Dongtai's sales outside the POR as evidence that the sales were created for the sole purpose of receiving lower dumping margins or none at all. Additionally, Petitioners argue that the history of Dongtai Peak's importer also raises questions about the timing of the sales.

Further, Petitioners maintain that Dongtai Peak's assertion that U.S. buyers normally try and purchase honey from other countries rather than the PRC because of high dumping duties actually supports the finding of non-*bona fide* sales. Therefore, Petitioners argue that the sales between Dongtai Peak and its U.S. customer were based on something other than normal commercial practices. Petitioners conclude that Dongtai Peak's sales to its U.S. customer were an attempt to engineer sales for the sole purpose of avoiding dumping margins so that it could start shipping large quantities of honey from the PRC.

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

Based on the totality of the circumstances discussed below, for these Final Results, the Department has determined that Dongtai Peak's POR sales are not *bona fide* transactions, and subsequently has rescinded the administrative review with respect to Dongtai Peak.

## Price

As we stated in the Preliminary Results, the Department may, in the course of a *bona fides* analysis, compare a respondent's selling price during the POR to sales made by other exporters during the POR, or a respondent's own sales, whether these sales were made to third country markets or to the United States after the POR.<sup>6</sup> In this case, we do not find evidence on the record to support Dongtai Peak's view that it is common for there to be significant markups from the transfer price AUVs of *entries* to the prices of arms-length wholesale or retail *sales*, or that these sales prices would be substantially higher than average entered values. It is the Department's practice to rely on AUVs because they are broader market prices. The Department is not able to determine if the sales in the CBP database are made to affiliates or end-use customers. Therefore, we cannot conclude that Dongtai Peak's assertion is correct that the AUVs are not representative of sales prices and therefore not a relevant comparison to its arms-length sales.

The Department agrees with Petitioners that during the POR, the entered value of Dongtai Peak's sales is an apples-to-apples comparison with the entered values of the sales of other exporters and producers of honey from the PRC, because we are examining entries from within the same HTSUS category, and this is consistent with the Department's established practice as outlined in the Prelim *Bona Fides* Memorandum at 5.<sup>7</sup> We also agree with Petitioners that other imports of this type of honey from the PRC during the POR provide a good comparison, because they represent the prevailing price of that honey from China at that time. The Court of International Trade ("CIT") has consistently upheld this practice.<sup>8</sup> Additionally, regarding Dongtai's argument that the HTSUS number is not an appropriate basis of comparison because it may contain different types of honey which demand different prices, we agree with Petitioner that this case is different from Garlic from the PRC. In contrast to Garlic from the PRC, here there is no record evidence showing that under the HTSUS number in question there is a significant difference in the prices of various types of honey. Conversely, in Garlic from the PRC, both parties conceded there were two different types of products with different values. Furthermore, we have previously found that the honey sold by Dongtai is not a different type of honey than the other honey in this HTSUS category, such that it would command significantly higher prices. Specifically, in the 6<sup>th</sup> new shipper review ("NSR") of honey from the PRC the Department noted that this type of honey<sup>9</sup> is the same type of honey and is produced in the same manner as the other honey in this category,<sup>10</sup> and Dongtai Peak has not put convincing evidence on the record to demonstrate that its honey is significantly different from the other honey in this category.

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<sup>6</sup> See TTPC, 366 F. Supp. 2d at 1250-58; see also Notice of Final Results of Antidumping Duty New Shipper Review: Honey from the People's Republic of China, 68 FR 62053 (October 31, 2003) and accompanying Issues and Decision Memorandum at Comment 1.

<sup>7</sup> See e.g. Hebei New Donghua Amino Acid Co. v. United States, 29 C.I.T. 603, 611-614 (Ct. Int'l Trade 2005).

<sup>8</sup> See id.

<sup>9</sup> The discussion regarding the type of honey is business proprietary, and was discussed at length in the Prelim *Bona Fides* Memorandum. See Prelim *Bona Fides* Memorandum.

<sup>10</sup> See Memorandum to The File; from Blaine Wiltse, regarding Placing Bona Fide Analysis Memo from the Sixth New Shipper Review of Honey from the PRC on the Record; dated December 16, 2009.

We disagree with Dongtai Peak's contention that the CBP data contains errors. The Department used the correct unit price for the price comparison, not the price Dongtai Peak alleges in its brief. It appears that Dongtai Peak was misreading the data and referencing a field that is unrelated to price.<sup>11</sup> Because the Department finds that the CBP data provide an accurate domestic benchmark, the Department does not need to look to third country prices for a comparison. Furthermore, we disagree with Dongtai Peak's argument that the Department should disregard the lowest prices included in the CBP data because they do not represent normal business practices. We disagree with Dongtai Peak that the Department can assume that the prices in the CBP data are aberrational based on calculated antidumping duty rates from prior review periods. Dongtai Peak has not put any evidence on the record to support its claim that other import prices are aberrational for this POR, and we do not consider it appropriate to look to a prior review period in order to compare Dongtai's prices to other importers. Because of the BPI nature of certain of Dongtai Peak's arguments regarding sales from other exporters included in this HTSUS category, we address those arguments in the Final *Bona Fides* Memorandum.<sup>12</sup>

It is the Department's practice to base its price comparisons on other U.S. POR entries of subject merchandise as reported by CBP, when available, rather than on information pertaining to a respondent's sales to third-country markets.<sup>13</sup> Dongtai Peak did not provide evidence to support its claim that the CBP data were aberrational or that some of the other sales included in the CBP data were potentially non-*bona fide*. Regarding Dongtai Peak's argument that most of the sales included in the CBP data consist of fixed prices available to fixed importers, the Department notes that we cannot determine if the sales in the CBP database are made to affiliates or end-users, so we cannot conclude that Dongtai Peak's assertion is correct that the AUVs are not representative of commercially reasonable arms-length sales prices. Therefore, because in this case we find no evidence that the AUVs are aberrational, that the HTSUS number is an apples-to-apples price comparison, and that the CBP data are accurate, we do not find it necessary to look to third countries, or to Dongtai Peak's sales to third-countries, for price comparison purposes. For a further discussion of this issue please see Final *Bona Fides* Memo.

Regarding the article Dongtai Peak placed on the record to justify its pricing; in the Preliminary Results we found that the article is not specific to the U.S. market. Further, we note that the article was published in 1998 and therefore does not reflect current market prices or conditions as we find that twelve-year-old data are not contemporaneous or specific enough for making a reasonable comparison. We note that we asked Dongtai Peak in three separate supplemental questionnaires to support its argument that its United States prices are reasonable as compared to current United States market prices and provide specific and independent pricing information.<sup>14</sup>

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<sup>11</sup> See id. at 5.

<sup>12</sup> See Memorandum to James C. Doyle, Director, Office 9, Import Administration, from Katie Marksberry, International Trade Specialist, Office 9, through Catherine Bertrand, Program Manager, Office 9; regarding Antidumping Duty Administrative Review of Honey from the People's Republic of China: Final *Bona Fide* Analysis of the Sale Under Review for Dongtai Peak Honey Industry Co., Ltd., dated April 29, 2010. ("Final *Bona Fides* Memo").

<sup>13</sup> See e.g., Fresh Garlic From the People's Republic of China: Final Results and Partial Rescission of the 13th Antidumping Duty Administrative and New Shipper Reviews, 74 FR 29174 (June 19, 2009).

<sup>14</sup> See Dongtai Peak's Supplemental Sections A, C and D Questionnaire Response, submitted August 26, 2009 at 7; see also Dongtai Peak's Supplemental Sections A, C and D Questionnaire Response, submitted September 28, 2009

We have evaluated the article, which Dongtai Peak provided, and we have found that because the article is over a decade old and not specific to the U.S. market, it does not corroborate Dongtai Peak's claim that its current U.S. prices are reasonable. We note that Dongtai Peak bears the burden of creating an adequate record to corroborate its argument that its U.S. prices are reasonable, and the agency has given Dongtai Peak a number of opportunities to do so.<sup>15</sup> Therefore, as stated in the Preliminary Results, we do not find that the article submitted by Dongtai Peak supports a conclusion that Dongtai Peak's price was reasonable because they are not specific or contemporaneous to the United States price of Dongtai Peak's POR sales.

Additionally, as we stated in the Preliminary Results, the Department has previously determined that the subject honey is not, as Dongtai Peak claims, a different type of honey, which would command different prices and require a different classification altogether.<sup>16</sup> Therefore, we continue to find, as we did in the Preliminary Results, that the relatively high prices of Dongtai Peak's sales to the United States support a non *bona fide* finding. Additionally, regarding Dongtai Peak's argument that it does not have the resources to obtain market research data from professional consultants, the Department agrees with Petitioners that Dongtai Peak bears the same burden as any other respondent in this review and that the Department cannot base its determinations on insubstantial or incomplete evidence.

### Quantity

It is the Department's practice, in conducting a *bona fide* analysis, to base its quantity comparison on other United States entries of subject merchandise during the POR as reported by CBP, when available.<sup>17</sup> Dongtai Peak argues that its sales were made to a new company and it was therefore reasonable for its quantity to be smaller than average. The discussion regarding Dongtai Peak's quantity is largely business proprietary, however, we find that this factors, when taken into account with a totality of the circumstances analysis, weights in favor of a finding that the sales were not *bona fide*. For a further discussion of this issue please see Prelim Bona Fides Memo; see also Final Bona Fides Memo.

Further, regarding Dongtai Peak's argument that the amount of honey it imported was limited by the maximum weight of a truck-borne container, the Department notes that Dongtai Peak could have shipped multiple containers of honey. Thus, the maximum legal weight of one container is irrelevant in determining whether Dongtai Peak's sales quantities were reasonable. The Department finds that while the quantity of a sale may not be sufficient, by itself, to warrant a finding that a transaction is not *bona fide*, when analyzed together with the totality of the circumstances, including the price difference as discussed above, the atypical quantities of the sales continues to support the Department's finding in the Preliminary Results that Dongtai Peak's sales were not *bona fide*.

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at 3-5; see also Dongtai Peak's Supplemental Sections A, C and D Questionnaire Response, submitted November 25, 2009 at 5.

<sup>15</sup> See Shandong Huarong Mach. Co. v. United States, 29 C.I.T. 484, 491 (Ct. Int'l Trade 2005) (holding that it is the burden of creating an adequate record lies with respondents) (citations omitted).

<sup>16</sup> See Memorandum to The File; from Blaine Wiltse, regarding Placing Bona Fide Analysis Memo from the Sixth New Shipper Review of Honey from the PRC on the Record; dated December 16, 2009.

<sup>17</sup> See e.g., Fresh Garlic From the People's Republic of China: Final Results and Partial Rescission of the 13th Antidumping Duty Administrative and New Shipper Reviews, 74 FR 29174 (June 19, 2009).

## Business Practices of U.S. Customer

The Department disagrees with Dongtai Peak's argument that its United States customer's registration lapse is a minor and inconsequential fact. The Department also disagrees with Dongtai Peak that we should analyze its first sale, which was invoiced outside the POR, in place of the POR specific sale that was completed while its customer was not registered in good standing. The Department notes that it is not ascribing to Dongtai Peak the oversights of its customer, regardless of its business knowledge, but rather is evaluating the facts in the context of all of the information the record of the review, consistent with the established practice regarding *bona fide* analysis. Because Dongtai Peak's United States customer was not registered in good standing when Dongtai Peak made its sales, we find that these atypical circumstances support a finding that Dongtai Peak's U.S. sales were not *bona fide* transactions.

Regarding Dongtai Peak's argument that its customer's purchases of honey from third countries were of a honey of a different type, and were made at a different time when market prices were relatively low for such honey, we find that Dongtai Peak has not placed any evidence on the record of this review to support this claim. Dongtai Peak has not demonstrated that there were any price fluctuations during the POR that would account for the price differences between its customer's purchases from Dongtai Peak as compared to purchases from third countries. Furthermore, Dongtai Peak has not demonstrated that its customer was purchasing a type of honey from a third country that would account for the lower price.

In the Preliminary Results we found that irregularities in Dongtai Peak's reimbursement forms and FDA standards testing weighed against a finding that Dongtai Peak's sales were *bona fide*.<sup>18</sup> After considering the Dongtai Peak's arguments, we recognize that Dongtai Peak's reimbursement form was completed by its customer's customs broker and was not identified as unacceptable by CBP. Additionally, we recognize that its honey was not rejected for entry by the FDA. Therefore, we note that we are not relying on these factors for our final decision.

Regarding Dongtai Peak's argument that it is common practice to blend premium honey with ordinary honey, the Department finds that Dongtai Peak has failed to provide any evidence to support this claim. Although Dongtai Peak argues that this practice is "common knowledge," the Department disagrees, and continues to find, as we did in the Preliminary Results, that the record does not support a conclusion that blending premium honey with ordinary honey is a commercially reasonable practice.

## Timing

In the Preliminary Results we found that, that the timing of a sale, in and of itself, does not warrant a determination that the sale is not *bona fide*.<sup>19</sup> While in some cases timing can be an issue and can weigh against a *bona fide* finding, here we disagree with Petitioners' contention that the timing of Dongtai Peak's sales in this review or in prior reviews demonstrates that the

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<sup>18</sup> See Prelim *Bona Fides* Memo at 10.

<sup>19</sup> *Id.* at 5.

sales were made for the sole purpose of obtaining a low dumping margin. Moreover, there is no evidence on the record that indicates that honey should only be sold at certain times of the year. Therefore, the fact that Dongtai Peak's sales entered at a certain time does not demonstrate that the timing of Dongtai Peak's sales was atypical. Therefore, the Department continues to find, that Dongtai Peak's sales were not atypical in timing, and the timing does not present any concerns regarding the *bona fide* nature of its transactions.<sup>20</sup>

In sum, given the totality of the circumstances surrounding Dongtai Peak's U.S. sales, including the atypical price and quantities, the fact that the purchases were atypical for the U.S. customer, and other circumstances further elaborated in the above-referenced decision memorandum regarding *bona fides*, the Department continues to find, as we did in the Preliminary Results that Dongtai Peak's POR sales are not *bona fide* commercial transactions. Therefore, we will rescind the review with respect to Dongtai Peak.

### **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 review and the final dumping margins in the Federal Register.

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

\_\_\_\_\_  
Ronald K. Lorentzen  
Deputy Assistant Secretary  
for Import Administration

\_\_\_\_\_  
Date

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<sup>20</sup> See id.