

DATE: July 2, 2007

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

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for AD/CVD Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the
Eighth New Shipper Review of Honey from the People's Republic
of China

SUMMARY

We have analyzed the briefs and rebuttal briefs of interested parties in the eighth new shipper review (NSR) of honey from the People's Republic of China (PRC). As a result of our analysis, we have made changes to the margin calculations from the preliminary results. See Honey from the People's Republic of China: Intent to Rescind, In Part, and Preliminary Results of Antidumping Duty New Shipper Reviews, 72 FR 111 (January 3, 2007) (Preliminary Results). We recommend that you approve the positions described in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is a complete list of the issues in these new shipper reviews.

Comments on the Preliminary Results

General Issues

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Background

We published the preliminary results of these new shipper reviews in the Federal Register on January 3, 2007. See Preliminary Results. The period of review (POR) is December 1, 2004, through November 30, 2005. We received case briefs from respondents Inner Mongolia Altin Bee-Keeping Co., Ltd. (IMA), Qinhuangdao Municipal Dafeng Industrial Co., Ltd. (QMD), and Dongtai Peak Honey Industry Co., Ltd. (Dongtai) on February 23, 2007, and from the American Honey Producers Association and the Sioux Honey Association (collectively, petitioners) on February 26, 2007, respectively.¹ We received rebuttal briefs from respondent Dongtai and petitioners on March 2, 2007, respectively.

Based on the determinations below, we have made changes to the margin calculations for IMA and Dongtai. Additionally, we have revised our calculations of the surrogate value for paint and financial ratios (i.e., SG&A and overhead) due to clerical errors made at the Preliminary Results. Furthermore, we have updated the wage rate used in our calculations to reflect the revised non-market economy (NME) wage rate, as posted on the Department's website on February 2, 2007, noting that this revision was not available at the Preliminary Results. The Department notified interested parties of the change to the NME wage rate on February 5, 2007, and afforded parties an opportunity to comment on the change in case briefs. See Memorandum to the File from Helen M. Kramer, Case Analyst, regarding Change in Wage Rate for the PRC, dated February 5, 2007. Finally, we have updated the surrogate value for brokerage and handling, to reflect a more contemporaneous source. See Fresh Garlic from the People's Republic of China: Final Results of the Eleventh Administrative Review and New Shipper Reviews, 72 FR 34438 (June 22, 2007).

However, we have not made changes to our position for the third participating respondent, QMD. For details on IMA's and Dongtai's margin calculation, see "Memorandum to the File: 8th Antidumping Duty New Shipper Review of the Antidumping Duty Order on Honey from the People's Republic of China for Inner Mongolia Altin Bee-Keeping Co., Ltd. (IMA)," dated July 2, 2007 (IMA Analysis Memo); see also, "Memorandum to the File: 8th Antidumping Duty New Shipper Review of the Antidumping Duty Order on Honey from the People's Republic of China for Dongtai Peak Honey Industry Co., Ltd. (Dongtai Peak)," dated July 2, 2007 (Dongtai Analysis Memo), which are on file in Import Administration's Central Records Unit (CRU), room B-099 of the Department of Commerce building; see also Factors of Production Valuation Memorandum for the Final Results of Eighth New Shipper Review of Honey from the People's Republic of China, dated July 2, 2007.

¹ On February 22, 2007, we received a courtesy copy case brief from respondents which we subsequently rejected as containing new information. On February 23, 2007, respondents re-filed their brief, per the Department's instructions, without the new information.

DISCUSSION OF THE ISSUES:

General Issues

Comment 1: Raw Honey Surrogate Value Methodology

Respondents IMA and Dongtai state that if the Department uses the “Honey Prices Nosedive as Supply Exceeds Demand” article from the Indian Financial Express, dated January 23, 2006 (Honey Nosedive Article), it should not inflate the honey price, given that the article reflects a straight decrease in price without consideration of the inflation factor for the Indian economy as a whole. See IMA’s, Dongtai’s, and QMD’s case brief dated February 23, 2007, at 11.

In rebuttal, the petitioners argue that the Department should retain the price inflator, and should drop or amend the deflator, because the record evidence indicates the significant role of PRC imports in creating the honey price depression. The petitioners state that the Department’s calculation of the inflation-adjusted Indian value of raw honey of Rs. 81.79 per kilogram (kg) is corroborated by the raw honey price of Rs. 80 per kg in the article dated Feb. 2, 2005, in Exh. 4 of the petitioners’ surrogate value submission of Sept. 22, 2006. The petitioners argue that the excess supply of honey on the Indian market that caused the price to nosedive during 2005 was not Indian honey, but rather a surge in PRC honey imports into India that caused a glut on the market. The petitioners argue that this glut depressed the value of raw honey sold by farmers for processing, as well as processed honey prices. In addition, the petitioners cite reports of the exposure of circumvention of the bans on PRC honey imports, imposed by various countries because of contamination by the antibiotic chloramphenicol, by repackaging of PRC honey in India. See petitioners’ March 2, 2007, rebuttal brief at 19-20. The petitioners argue that this exposure left large stockpiles of PRC honey in India, and they surmise that these stockpiles were liquidated at low prices, hurting the Indian domestic honey market.

The petitioners contend that the Department’s use of deflators reflecting the price suppression caused by massive PRC imports into India results in a “circular valuation” that rewards PRC exporters for devastating the Indian surrogate market industry. Petitioners argue that if the Department continues to employ a deflation methodology, it should restrict the deflation to reflect domestic supply and demand in the Indian honey market. Petitioners cite an article entitled, “Chinese imports sting honeybee farms in Kerala, Tamil Nau,” which claims that by November 2005, PRC honey imports had depressed processed honey prices by 25 percent.

The “Honey Nosedive Article” indicates a total drop of 44 percent, and the petitioners infer that excluding the PRC price effect would leave the drop at 19 percent (44 - 25), or 1.62 percent a month, attributable to Indian honey market forces. Applying this revised deflator, the petitioners calculate the surrogate value for raw honey to be Rs. 73.83 per kg, as opposed to the Department’s calculation of Rs. 65.10 per kg. The petitioners argue that their proposed surrogate value for Indian raw honey is consistent with the average cost of raw honey incurred by MHPC, the Indian company used to establish the surrogate financial ratios, of Rs. 72.92 per kg.

Department's Position:

In accordance with section 773(c)(1) of the Tariff Act of 1930, as amended (the Act), the Department selects the best available information from the appropriate surrogate country to value the factors of production (FOP). In selecting the most appropriate surrogate value (SV), the Department considers several factors, including the quality, specificity, and contemporaneity of the source information. See, e.g., Final Results of Antidumping Duty Administrative Review and Final Results of New Shipper Review: Hand Trucks and Certain Parts Thereof from the People's Republic of China, 72 FR 27287 (May 15, 2007) and accompanying Issues and Decision Memorandum at Comment 10 at 29.

In selecting the EDA Rural Systems Pvt Ltd. (EDA) data as the basis for the raw honey surrogate value, the Department continues to find that the raw honey pricing data from this source represent the best information currently available because they are verifiable and credible data, and are specific to the raw honey beekeeping industry in India. Additionally, the Department continues to find that the EDA data are highly documented, including numerous specific price points over a six-year period for multiple types of honey from many suppliers, and include detailed information on production, inputs, and beekeepers. The EDA data are specific to the raw honey beekeeping industry and the data collection methods for the EDA data are documented with respect to data sources, distribution, and collection practice.

At the Preliminary Results, the Department made several adjustments to the base EDA data. The Department will make such adjustments to surrogate value data on material inputs to ensure that the data are reflective of current market conditions. First, and as noted in the Preliminary Results, the Department inflated the EDA data using the Indian wholesale price index (WPI), as published in the International Financial Statistics (IFS) of the International Monetary Fund (IMF), to bring the price of raw honey derived from the EDA data to POR-specific price levels. Additionally, the Department applied a cumulative, monthly deflation factor of 3.71 percent to the inflated EDA data because interested parties demonstrated through the submission of financial and economic news articles that a general decline in raw honey prices pervaded the Indian honey market in 2005.² As such, the Department considers the application of a deflator to

² The Department erred in its Factors of Production Valuation Memorandum for the Preliminary Results and Rescission of Fourth Antidumping Duty Administrative Review and Eighth New Shipper Review of Honey from the People's Republic of China, dated December 21, 2006 (Prelim Factor Valuation Memo). Specifically, the Department erroneously stated that the price decreases provided in the "Honey Nosedive Article" "indicated steady decline through 2004 and the first five months of 2005. From this data, the Department determined that the average Indian honey price decline for 2003/2004 and 2005 was 44 percent." See Prelim Factor Valuation Memo at 4. However, we note that, according to the article, the price decline occurred in 2005, not 2003 and 2004 (the years were used as base comparison years to illustrate the decline). This fact comports with our actual deflator calculation which covers January-November 2005. See Prelim Factor Valuation Memo at Attachment 2; see also, Memorandum to the File from Patrick Edwards, Case Analyst, through Angelica L. Mendoza, Program Manager,

the inflated EDA data as necessary to provide a surrogate value which reflects market conditions in India. Moreover, this approach is consistent with past PRC honey reviews in which the Department has made adjustments to its surrogate value for raw honey to account for changes in the Indian honey market. See 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 at 2, where the Department determined to further inflate its surrogate value for raw honey based on record evidence that raw honey prices had dramatically increased on a monthly basis in excess of the WPI during the POR of that case. See also Preliminary Results, 72 FR at 116.

We disagree with petitioners that a hybrid deflation factor is warranted in this case. In their September 22, 2006, surrogate value submission, petitioners cite to the article "Chinese imports sting honeybee farms in Kerala, Tamil Nadu," as a basis for limiting the deflation factor by the prices of "domestic Indian honey." The article lacks the necessary indicia of reliability and is not specific with regard to whether the article is discussing certain types of honey or honey produced in certain regions of India. Further, the article provides no indication of the source of these prices, nor does it provide any indication as to whether the Rs 100 to Rs 120 per kilogram price range is meant to reflect a portion of 2005, the full year of 2005, or any years prior to the POR. Moreover, the prices lack specificity in that they are generalized ranges, and not specific price points. See petitioners' September 22, 2006, surrogate value submission at Exhibit 15. Thus, these prices fail to provide a reliable basis upon which to base the Department's construct of a raw honey surrogate value that reflects market conditions in India.

We disagree with petitioners' claim that the "Honey Nosedive Article" is somehow less reliable as an indicator of the decrease in Indian raw honey prices than other sources cited by interested parties. The "Honey Nosedive Article," at the very least, provides several specific price points in 2005. We also find that the "Honey Nosedive Article" is a reliable indicator of the decrease in raw honey prices because it identifies the regions of India from which the prices were sourced. Moreover, contrary to petitioners' assertions, the "Honey Nosedive Article" does not cite the surge in PRC honey imports as the cause for the price decreases in India. Rather, it indicates that "the supply has far exceeded the demand in absence of a proper pricing formula and unorganized retailing," indicating domestic market conditions are the cause of the price decline. See Attachment 2 of the Department's Prelim Factor Valuation Memo. Accordingly, we have no basis to infer that our deflation methodology need be further adjusted to exclude the "massive PRC imports" in this case. We additionally have no reason to believe that the decline was limited to a specific region (as petitioner contends), as the decline appears to be caused by factors that would affect prices throughout the country. Just as the Department has determined that the EDA data, along with the WPI inflator, accurately reflects honey prices throughout India, it is also the Department's determination that the "Honey Nosedive Article" indicates there was a drop in Indian honey prices. Therefore, we find that our deflator properly reflects domestic

regarding Omitted Exhibit from Preliminary Results, dated June 13, 2007. Therefore, we have appropriately applied a monthly deflation factor of 3.71 percent for January through November 2005.

supply and demand in the Indian beekeeping market irrespective of PRC honey imports into India for 2005.

Finally, we disagree with IMA's and Dongtai's contention that the Department should inflate the EDA data using only the price points from the "Honey Nosedive Article" as they are more contemporaneous to the POR and indicate a straight decline in Indian raw honey prices. It is the Department's longstanding practice to inflate non-contemporaneous surrogate values using the WPI as these prices reflect the general macroeconomic factors which affect the Indian economy as a whole. See, e.g., Honey from the People's Republic of China: Intent to Rescind and Preliminary Results of Antidumping Duty New Shipper Reviews, 71 FR 32923, 32927 (June 7, 2006) (unchanged in the Department's Final Results at 71 FR 58579 (October 4, 2006)); Glycine From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 70 FR 17649, 17651 (April 7, 2005) (unchanged in the Department's Final Results at 70 FR 47176, and the accompanying Issues and Decision Memorandum at Comment 1 at 4). As noted above, we find that the price points in the "Honey Nosedive Article" are relevant to our analysis as they indicate a dramatic decline in Indian raw honey prices in excess of WPI during 2005. However, the "Honey Nosedive Article" does not specify how the data were compiled nor do the quoted price points reflect inflation factors for the Indian economy as a whole. Therefore, for the purposes of these final results, we continue to find that the EDA data are the most specific and documented surrogate source of raw honey prices in India and, as it is inflated by WPI and deflated by record evidence of declining prices, is reflective of market conditions in India during the POR.

Company-Specific Issues

Inner Mongolia Altin Bee-Keeping Co., Ltd.-Related Issues

Comment 2: Rejection of Beekeeping Factors of Production (FOP)

IMA claims that the Department's rejection of IMA's beekeeping FOP in the Preliminary Results represents an abrupt departure from the Department's statutory requirements, controlling judicial precedent, and long-established policies and practices. Referring to the Department's listing of the circumstances under which it may depart from its standard FOP methodology, IMA professes not to understand how the Department could consider the first circumstance, in which an intermediate input accounts for an insignificant share of total output, in making its decision to use the SV for raw honey. IMA asserts that the Department's own calculations show that raw honey accounts for a very significant share of total output. IMA asserts that the Department is well aware of the universe of inputs that factor into honey production, that it has provided data and corroborating information on the individual FOPs, and that the Department conducted on-site verifications to confirm the accuracy of any and all information it felt the need to examine.

The petitioners rebut IMA's contention, stating that the record shows that the Department departed from its standard FOP methodology due to the second circumstance that one or more significant elements of cost could not be adequately measured. As support, petitioners cite the Department's finding in the Preliminary Results that IMA "is unable to record accurately and substantiate the complete costs of producing raw honey. Therefore, we have preliminarily determined that the use of intermediate input methodology is more accurate, and have used raw honey as the direct raw material input." See Preliminary Results, 72 FR at 115. The petitioners argue that the Department's determination is fully consistent with the Department's policy set forth in Fresh Garlic from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Administrative Review and Preliminary Results of New Shipper Reviews, 70 FR 69942, 69947-48 (Nov. 18, 2005) (PRC Garlic). The petitioners state that the Department decided in PRC Garlic to begin the valuation process with an intermediate input (raw harvested garlic bulbs) rather than with the upstream FOP used to produce the input because the alternative methodology would produce more accurate results.

Moreover, the petitioners argue that the data IMA provided for the FOPs used to produce raw honey were not sufficiently accurate nor verifiable to ensure an accurate result. The petitioners state that the appropriateness of applying an alternative valuation methodology using an intermediate input depends on whether this methodology results in a more accurate calculation of normal value (NV) in the particular case. The petitioners assert that substantial evidence supports the Department's finding regarding the inaccuracy of IMA's FOP for raw honey, and that the decision to use the alternative methodology is therefore correct.

Particularly, the petitioners argue that IMA's data for beekeeping FOPs, e.g., species of bees, are substantially incomplete. The petitioners cite the Department's statement in a previous administrative review that "bee species matter in terms of production output and value." See Honey from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 70 FR 74764, 74772-73 (Dec. 16, 2005) (Jiangsu Decision). In that case, the petitioners state that the Department used the intermediate valuation methodology in part because there was no "authoritative source on the record" supporting the respondents' claim regarding the species of bees that its beekeepers used.

The petitioners assert that the same situation exists with respect to IMA and QMD, citing contradictory and unverified information on the actual bee species used. The petitioners conclude that the Department correctly determined that it is prevented from applying a species-specific SV to the bee factor. The petitioners argue that one of the most important factors in determining appropriate SVs is comparability of merchandise, and that this is related to the directive to calculate dumping margins as accurately as possible. The petitioners contend that bees are the most important material input to the production of raw honey, and that it is crucial for respondents to identify the actual bee species that produced their raw honey, because each bee species produces honey at a unique rate compared to all other species. The petitioners argue that both IMA and QMD submitted contradictory information regarding the species of bees they purchased, and that the Department was unable to verify the information. See the Department's

August 17, 2006, Memorandum to the File, Verification of the Sales and Factor Responses from Inner Mongolia Altin Bee-Keeping Co., Ltd. in the Antidumping Duty New Shipper Review of Honey from the People's Republic of China at 1.

The petitioners state that there is no information on the record of this proceeding related to the species, mortality reproductive rates or honey production rates of the particular bees used by the PRC respondents. The petitioners cite Jiangsu Decision as supporting their contention that the Department has already recognized that the specific bee species used in honey production is a significant factor in selecting the appropriate SV for the bee FOP. The petitioners claim that without such verified information, the Department cannot calculate an accurate NV. Further, the petitioners cite the precedent in Jiangsu Decision as requiring respondents to report the actual quantity of bees used in production. The petitioners conclude that without this critical information, the Department cannot use the reported beekeeping factors, and thus was justified in using the intermediate valuation methodology, as it has in every prior review, and the original investigation, of the antidumping duty order on honey from the PRC.

IMA faults the Department for its failure to conduct an onsite verification of any of the bee farms while its verification team was in the PRC. IMA contends that the bee farms are very primitive operations involving very few laborers and it is not a normal practice for these farms to keep detailed records of labor hours. IMA claims that the Department has enough institutional knowledge based on its experience with the antidumping duty order on honey to know the average labor hours for such operations. IMA states that it reported average labor hours per beekeeper per day, and asserts that this is sufficiently accurate for the Department's calculation of labor consumption. IMA argues that the Department failed to explain why the labor FOP would not be adequately accounted for if it used IMA's average, nor why use of an average is unacceptable here when the Department commonly uses averages in other cases.

In rebuttal, the petitioners argue that the Department correctly found that the use of average versus actual labor hours would lead to an inaccurate NV calculation for honey. The petitioners cite the Department's comparable findings in PRC Garlic as a precedent. See PRC Garlic at 69947-48. The petitioners argue that the issue is not whether IMA or the other respondents have a business reason for tracking the labor involved in beekeeping, but whether the Department is able to verify that the respondents' claimed labor hours are accurate. The petitioners argue that as a matter of law, responsibility for creating a complete and accurate record falls on respondents, not the Department. The petitioners state that IMA failed to cite any precedent for its claim that the Department "commonly" uses average labor hours in its calculations.

IMA acknowledges that it was unable to report the chemical composition of the pesticides used, but argues that the Department should follow its long-established practice and apply the best available SV to the pesticide. IMA claims that the Department has enough information to know that the pesticide FOP represents an insignificant fraction of the value of the raw honey input.

The petitioners argue, in rebuttal, that respondents' inability to track direct inputs, or to identify the type or quality of input, is precisely why the Department opted to use a valuation methodology that obviates the need to account for these upstream FOPs with inaccurate data. Regarding IMA's assertion that the Department could simply apply a "best available" value to the pesticide, the petitioners argue that without knowing the chemical composition of the pesticide, it would be impossible to know that one SV or another was the "best available." The petitioners state that IMA's claim that the pesticide FOP is insignificant cannot be supported, because the types and amounts of pesticide used are unknown.

IMA also argues that overhead expenses are a very minor factor relative to other FOPs for the raw honey input, and that the Department should use its own vast resources to obtain a reliable SV for the overhead expense factor. IMA claims that the rejection of its beekeeping factors is unfair. IMA claims that it provided accurate scientific data proving beyond any reasonable doubt that its reported per-hive honey yield is well within known worldwide yield ranges.

The petitioners argue in rebuttal that the Department did not have an opportunity to verify the honey yields and other elements of beekeeping because of the locations of the farms and the time of year in which verification occurred. The petitioners cite similarities between the current review and the Department's findings in PRC Garlic, in which it concluded that because of deficiencies in record-keeping by the farms, the only way the Department could derive complete and precise FOP data would be to physically measure and observe each of the growing and harvesting activities as they occur, as part of verification. The petitioners cite the Department's conclusion in PRC Garlic: "Clearly, time and resources, in addition to the burden of verifying multiple stages of production, would not allow the Department to verify every farm." (Garlic Valuation Memo at 10.) The petitioners argue that the same constraints (location of farms or hives, length of production cycle, and lack of records that track actual labor hours or yields) exist in this review and support the rejection of respondent's reported beekeeping factors.

Moreover, the petitioners counter IMA's claim that it is "unfair and inappropriate for the Department to in effect punish IMA by rejecting its beekeeping FOPs" (IMA Case Brief at 7), arguing that use of the intermediate input valuation methodology is not to be confused with the application of facts available (FA), much less adverse facts available (AFA). The petitioners state that the intermediate input methodology allows the Department to avoid the application of FA and AFA to upstream factors that have not been accurately reported.

Department's Position:

Based on our analysis of the information on the record, the Department finds that IMA is unable to record accurately and substantiate the complete costs of producing raw honey. Therefore, the Department will continue to use the intermediate input methodology as it is more accurate, and, as in prior cases, the Department has used raw honey as the direct raw material input.

It is the Department's normal practice, pursuant to section 773(c)(1)(B) of the Act, to calculate NV using each of the FOPs that a respondent consumes in the production of a unit of the subject

merchandise. See Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China, 72 FR 9508 (March 2, 2007), and accompanying Issues and Decision Memorandum at Comment 6 at 16; see also, Notice of Final Determination of Sales at Less than Fair Value: Polyvinyl Alcohol from the People's Republic of China, 68 FR 47538 (August 11, 2003). There are circumstances, however, in which the Department will modify its standard FOP methodology, choosing to apply a surrogate value to an intermediate input: 1) when the intermediate input accounts for an insignificant share of total output, and the potential increase in accuracy to the overall calculation that results from valuing each of the FOPs is outweighed by the resources, time, and burden such an analysis would place on all of the parties to the proceeding; or 2) when valuing the factors used in a production process yielding an intermediate product may lead to an inaccurate result because a significant element of cost would not be adequately accounted for in the overall factors buildup. See Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Reviews, 71 FR 26329 (May 4, 2006), and accompanying Issues and Decision Memorandum at Comment 1; see also, Certain Preserved Mushrooms from the People's Republic of China: Final Results of First New Shipper Review and First Antidumping Duty Administrative Review, 66 FR 31204 (June 11, 2001) (Certain Preserved Mushrooms), and accompanying Issues and Decision Memorandum at Comment 2.

IMA claims that the Department, in the instant review, did not value the upstream FOPs (*i.e.*, beekeeping factors) because it considered the factors buildup of raw honey to be insignificant. IMA is incorrect. Rather, as noted above and articulated in the Preliminary Results, the Department found that the data IMA provided for its raw honey FOP buildup were not sufficiently accurate or verifiable. See Preliminary Results, 72 FR 115.

Specifically, the Department found during its verification of IMA that the company could not substantiate the species of bees that its beekeepers used; nor could it, as a result, substantiate the mortality reproductive rates or honey production rates of the particular bees used. As articulated in the Jiangsu Final Decision, the Department has “already recognized the specific bee species used in honey production as being a significant factor in selecting the appropriate SV for bees in the FOP build-up.” See Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review: Honey from the People's Republic of China, 71 FR 34893 (June 16, 2006) and accompanying Issues and Decision Memorandum, Comment 9 at 36-39 (Jiangsu Final Decision).

With regard to IMA's argument that its bee farms are primitive operations involving few laborers, for whom it is normal to not keep detailed records of the labor hours worked, the Department considers this admission as additional support for alternatively valuing the intermediate input of raw honey. The fact that IMA does not keep detailed records of the labor hours worked by its bee farmers means that any normal value build-up inclusive of what are essentially estimated labor hours would be flawed and inherently inaccurate. Moreover, the same rationale applies to IMA's lack of specific information concerning the brand and chemical composition of the pesticides used at its bee farms. IMA's arguments regarding labor and

pesticides presume that either the Department has an “institutional knowledge” of the inputs required to produce raw honey (the argument for labor hours), or the Department should be able to apply a “best available” surrogate (the argument for pesticide) given the insignificant role of {the material input} in the factors build-up. This rationale implied by IMA in these instances is misguided.

The responsibility for constructing an accurate record of usage rates and data regarding FOPs lies with IMA. IMA must provide full, complete and accurate data on each factor consumed. As stated previously, the data provided by IMA would render the eventual build-up to normal value flawed and inaccurate, as it would be based on inaccurate data regarding the material inputs.

Contrary to IMA’s assertions, the Department’s use of the intermediate input (*i.e.*, raw honey), rather than beginning the factors of production build-up with an upstream valuation of IMA’s beekeeping inputs does not amount to FA, but rather indicates that the intermediate input of raw honey is the appropriate starting point in the factors build-up and avoids a valuation of IMA’s beekeeping inputs based on FA. Furthermore, applying this methodology does not preclude IMA or any other producer/exporter of honey from the PRC from requesting an upstream factors valuation in future cases; currently, valuing the intermediate input is only a reflection of deficiencies in the entirety of the record with regard to IMA’s upstream factors.

Based on all of the above and IMA’s FOP data, the Department continues to find that the appropriate methodology is to follow its alternative valuing methodology from the Preliminary Results and value the intermediate input of raw honey, rather than IMA’s upstream beekeeping factors.

Qinhuangdao Municipal Dafeng Industrial Co., Ltd.-Related Issues

Comment 3: Whether the NSR for QMD Should Be Rescinded

QMD claims that the Department failed to provide any explanation as to how the price or quantity of QMD’s sale was aberrational, and argues that the Department verified that the price and quantity of the POR sale were determined via commercially reasonable and arm’s length negotiations. (QMD Case Brief at 9.) QMD argues that the Department has substantial verified evidence and documentation indicating that QMD’s sale of honey in retail packaging was not an anomaly and that QMD “clearly intends for such sales to comprise an ongoing part of its business.” (QMD Case Brief at 10). QMD states that the Department reviewed retail-package sales contract documents and observed QMD personnel bottling honey for retail-package sales while conducting its verification. QMD argues that it should not be penalized for delays encountered in shipping its post-POR retail-packaged sale shipment to the United States that were the fault of its unaffiliated U.S. customer. QMD argues that the fact that it takes time to develop retail markets does not constitute evidence that sales of retail-packaged honey are not part of QMD’s normal business practices, and that the Department has provided no meaningful evidence to prove otherwise.

QMD argues that during the POR, a significant portion of the retail-packed honey it exported was organic, and that it is misleading and inappropriate to compare prices of retail-packed organic honey with those of bulk-packed non-organic honey. QMD argues that these are two very different products in terms of their characteristics, quality and price.

In rebuttal, the petitioners note that the Department compared the price of QMD's single POR sale with the average unit values (AUV) of imports from the PRC of honey packed both in drums and in retail packages. The petitioners argue that a comparison of the price of QMD's POR sale with its post-POR sales, and with other imports from the PRC during the POR, demonstrates that QMD's POR price was not reflective of the company's or the industry's normal business practices, and that this price was not based on normal commercial considerations. For that reason, the petitioners argue, the sale does not qualify as a *bona fide* commercial transaction.

The petitioners state that QMD's claim that the Department's comparison of QMD's POR sale with its post-POR sales is unfair because of the difference in packing is a misinterpretation of the Department's analysis. The petitioners cite the analysis in the Department's Memorandum to the File, Eighth Antidumping Duty New Shipper Review of the Antidumping Duty Order on Honey from the People's Republic of China: *Bona Fides* Analysis of Qinhuangdao Municipal Dafeng Industrial Co., Ltd. (December 21, 2006) (QMD Memo) at 4, and argue that the difference between the POR and post-POR sales is precisely the point. The petitioners state that the Department specifically relies on the "inaptness of the comparison" to illustrate that the POR sale is not an appropriate basis on which to base the NSR. (Case Brief at 32.) The petitioners also note that the Department did not err in comparing organic retail-packed honey with non-organic honey prices, as QMD claims. (Case Brief at 11.) The petitioners state that QMD points to no documentation that supports the assertion that "a significant portion of the retail-packed honey was organic," or that the honey sold after the POR was non-organic.

The petitioners argue that QMD's claim that the Department verified that its POR sale was commercially reasonable is incorrect. The petitioners contend that the Department merely verified that the price and quantity reported were the price and quantity actually charged and shipped. The petitioners cite the statement in the Department's verification report that "this report does not draw conclusions as to whether the reported information was successfully verified, and does not make findings or conclusions regarding how the facts obtained at verification will ultimately be treated in the Department's determinations." See Verification of the Sales and Factor Response of Qinhuangdao Municipal Dafeng Industrial Co., Ltd. In the Antidumping New Shipper Review of Honey from the People's Republic of China (August 29, 2006) (QMD Verification Report) at 1.

The petitioners argue that the record does not show that sales of honey in retail packaging are representative of QMD's business during the POR or afterward. The petitioners cite business proprietary information in QMD Verification Report at 4 that supports the Department's conclusion in the QMD Memo that the existence of a post-POR sale of retail-packaged honey was questionable. The petitioners argue that based on the record, the Department has sufficient

grounds to conclude that QMD's POR customer was not a *bona fide* importer and reseller of honey and that the sale was not *bona fide*. The petitioners state that despite QMD's claim, the Department did not verify that QMD "clearly intends" that retail-packaged honey sales be an "ongoing part of its business." (Case Brief at 10.) Instead, the petitioners argue, the Department noted that QMD's single POR sales quantity is aberrational when compared to QMD's own "normal" commercial practice. (QMD Memo at 4-5.) The petitioners state that QMD misinterpreted the Department's analysis when it complained that the comparison of QMD's POR sale with its post-POR sales is unfair because of the difference in packing. The petitioners argue that the point of the Department's comparison was to show that none of QMD's post-POR entries of honey resembles the POR sale. The petitioners cite the Department's analysis in the QMD Memo, in which it found that QMD made no sales of retail-packaged honey to third markets during the POR, or to the United States post-POR, and that QMD's POR sale is, therefore, not representative of its commercial practice. The petitioners state that the Department specifically relied on the "inaptness of the comparison" to illustrate that the POR sale is not an appropriate basis for QMD's NSR. (Case Brief at 32.) Furthermore, the petitioners point out that the Department compared QMD's POR sale to other entries of retail-packaged honey during the POR and found it to be atypical.

The petitioners argue that the fact pattern in this review is analogous to that in the NSR of Wuhan Shino-Food Trade Co., Ltd. that was rescinded in Honey from the People's Republic of China: Rescission and Final Results of Antidumping Duty New Shipper Reviews, 71 FR 58579 (Oct. 4, 2006) (Shino-Food). The petitioners note that in Shino-Food the outlier nature of the single POR sale compared to the value of other PRC imports during the POR was one of the factors that led the Department to find the sale in question was not *bona fide*. The petitioners state that the Department followed a similar analysis in this case, and it should reach the same result. The petitioners argue that the facts are not consistent with QMD's claim that the price and quantity of its sale were the result of arm's length negotiation, as they were not consistent with the terms that were available in the marketplace. Further, the petitioners argue that a comparison of QMD's single POR sale with QMD's post-POR sales, and with other imports from the PRC during the POR, demonstrates that QMD's POR price was not reflective of the company's or the industry's normal business practices, and that this price was not based on normal commercial considerations during the contemporaneous period. For that reason, the petitioners conclude that the sale does not qualify as a *bona fide* commercial transaction. The petitioners also question whether the U.S. customer for the NSR sale is a *bona fide* importer of honey.

The petitioners claim that the record shows that, in general, PRC exports of retail-packaged honey to the United States are aberrational and economically unfeasible on a regular, on-going basis. They conclude that such sales *per se* cannot qualify as *bona fide* commercial transactions, and cannot serve as a basis for calculating an exporter's cash duty deposit rate in a NSR. The petitioners conclude that the Department should rescind the NSR with respect to QMD.

Department's Position:

We agree with petitioner, in part. The basis for the Department finding QMD's sale to be non-*bona fide* at the Preliminary Results, was that a) QMD had made no other sales of retail-packed honey to the United States or third-country markets either during or after the POR (as such the Department found QMD's sale to be atypical of its normal business practice), and b) QMD's price and quantity were aberrational in comparison to all other imports of retail-packed honey from the PRC.

QMD's claim that the Department unfairly compared its POR sale of retail-packed honey to imports of bulk honey imports is incorrect. The Department specifically conducted its analysis of QMD's POR sale in comparing it to not only the entire universe of honey imported from the PRC during the POR, but also to the universe of retail-packed honey imported from the PRC during the POR under the U.S. Harmonized Tariff Schedule (HTS) classification that is specific to retail honey, HTS 0409000025. As such, the Department clearly provided the appropriate analysis of QMD's lone POR sale of retail honey to all imports of retail honey from the PRC. *See* QMD Memo at 3. And indeed, it was this "apples-to-apples" analysis that led the Department to its preliminary determination that the price and quantity at which QMD sold its retail-packed honey to the United States were aberrational because the average unit value of QMD's sale was significantly higher than any other sale of PRC-origin retail honey. *See Preliminary Results* at 113. *See also* QMD Memo at 3-4 and Attachment III.

Similarly, QMD's argument that the Department verified the "commercial reasonableness" of QMD's sale is incorrect. Nowhere in the Department's verification report regarding QMD does the Department indicate that QMD's sale was "commercially reasonable." Nor does the Department state anywhere in its verification report that it verified QMD's intent for retail-packed honey sales to comprise an "ongoing part of its business." The Department does not verify or attest to the commercial reasonableness of a respondent's sales during the conduct of a verification. The purpose of a verification is solely to confirm that the information reported to it by a respondent is correct and supported by verifiable, factual information. *See Bomont Industries v. United States*, 14 C.I.T. 208, 209 (1990) ("the purpose of verification is to test information for accuracy and completeness"). Moreover, it is the respondent's responsibility to demonstrate to the Department not that it intends for a business or product to eventually comprise a part of its normal course of business, but rather, that it is already a part of the respondent's normal course of business, as was the case with Dongtai (*see* below for further discussion).

In the QMD Memo, we stated that although the Department discovered sales documentation during verification, and even observed QMD employees filling the order for what would have been a post-POR sale of retail honey to the United States, this sale never entered into the United

States.³ See QMD Memo at 4. Consequently, there was no evidence of any additional sales of subject merchandise made by QMD after the POR, and the Department determined that no post-POR sales transaction was formally completed. It is for this reason the Department considered QMD's POR sale to be atypical of its normal business practice. Specifically, the Department was unable to compare the price and quantity of QMD's POR sale to its post-POR sales, as QMD made no sale(s) of comparable merchandise following the POR. The Department, therefore, determines that it will continue to find QMD's POR sale to be non-*bona fide* for purposes of our final results.

Dongtai Peak Honey Industry Co., Ltd.-Related Issues

Comment 4: Whether the NSR for Dongtai Should Be Rescinded

The petitioners argue that Dongtai's single POR sale was not a *bona fide* commercial transaction, on the basis that the type of packing used, *i.e.*, retail packages, is not commercially viable. (See similar argument above, under Comment 3.) The petitioners claim that Dongtai's two U.S. sales (POR and post-POR) cannot reasonably be viewed as demonstrating that the U.S. market is capable of sustaining ongoing sales in commercial quantities of honey sold in such a form.

The petitioners claim that the Department made two errors in comparing the AUV of Dongtai's POR sale to the average AUV of entries of similar merchandise by other exporters during the POR. First, petitioners argue that the Department should have excluded the prices and quantities for the entries by QMD and Dongtai in deriving the benchmarks for the AUV and average quantity. The petitioners state that it was inappropriate to include QMD's sale in the calculations because the Department had preliminarily determined that QMD's POR sale was not a *bona fide* commercial transaction. Further, the petitioners argue that including Dongtai's price and quantity inappropriately allows them to influence the benchmarks, and thereby the outcome, of the comparisons between the benchmarks and Dongtai's price and quantity. The petitioners state that the benchmark AUV should be significantly lower, and the average quantity should be higher, than the values the Department used in its preliminary *bona fide* analysis.

Second, the petitioners claim that the Department erred in using the gross weight, instead of the net weight, of the honey to calculate the average price per kg of Dongtai's sale. Based on their recalculation of Dongtai's average price, and the percentage by which that price exceeds the benchmark AUV, the petitioners argue that the Department reached the wrong conclusion in finding Dongtai's sale to be *bona fide*. Further, the petitioners argue that, given the similarities between the price and quantity of QMD's and Dongtai's single U.S. sale, and the finding that QMD's sale was not *bona fide*, the Department should have reached the same conclusion for Dongtai's sale.

³ We note that, according to our review of CBP data, this sale, to date, has not entered the United States for consumption.

The petitioners also argue that the Department's analysis of Dongtai's post-POR sales is flawed because the post-POR sales to the United States and to a third country were in larger quantities than the POR sale. The petitioners argue that the quantity of Dongtai's POR sale is not indicative of its normal business practices. The petitioners cite Shino-Food, in which the Department noted that while the quantity of a sale alone is not sufficient to warrant a finding that a transaction is not *bona fide*, when analyzed together with the totality of the circumstances of the sale, the aberrational quantity of the sale informs the decision of whether the sale was *bona fide*. The petitioners contend that the Department should conclude that Dongtai's new shipper sale is of a quantity that is atypical of Dongtai's normal shipments, and should not be accepted as the basis for its individual dumping margin. Moreover, the petitioners argue that because the post-POR volume was so much larger than the POR volume, any comparison of average prices based on such disparate sales volumes is invalid. The petitioners point out that the Department noted in its analysis that the price was the same during and after the POR for the U.S. sales, and that the prices for the same sizes sold in a third country were comparable. The petitioners claim that this analysis does not establish the *bona fides* of the sale, arguing that there must be other factors that support the commercial reasonableness of the sale, and contend that price comparability does not account for facts during the post-POR period that may skew the analysis, such as industry price trends.

The petitioners state that it is essential that the Department evaluate the *bona fides* of the importer of record and require a full disclosure and understanding of the importer's role in the importation of Dongtai's POR sale. The petitioners claim that this has not occurred in this review. The petitioners cite evidence that the Department placed on the record, and developed in supplemental questionnaires, concerning affiliations of Dongtai's importer with companies that were involved with the importation of honey from the PRC. The petitioners contend that the importer falsely claimed that it did not act under any other name as the importer of record for any entries of honey. See Petitioners' Case Brief at 15-20. The petitioners contend that the importer's past record of non-compliance with the antidumping duty law supports finding that the subject sale was not *bona fide*, and that the Department should rescind this review with respect to Dongtai in accordance with the standard put forth in Shino-Food regarding inaccurate and incomplete information.

In rebuttal, Dongtai argues that while the Department's *bona fides* analysis of Dongtai's POR sale necessarily addresses different facts and circumstances than those that were uniquely relevant to the POR sales of either QMD or Shino-Food, there is nothing on the record to indicate that the Department did not perform a full *bona fides* analysis of Dongtai's POR sale. Dongtai states that it is unable to identify where the Department's established *bona fides* analysis requires that the Department perform a potentially burdensome and broad economic analysis to determine whether or not all the imports of a product packed and shipped in a particular form from an entire country are shipped to the U.S. market in commercial quantities on an ongoing basis.

Dongtai disputes petitioners' claim that a substantial amount of the honey produced in, and imported into, the United States is ultimately packaged in relatively small containers for end-use

sale to consumers at the retail level. Dongtai claims that it is common knowledge that almost all of the bulk packed honey goes to food and beverage processors, and is not packed for table honey. Dongtai argues that it is unclear how the petitioners define the terms “viability,” “commercial quantities,” or “ongoing.” Dongtai states that it is also unclear where the petitioners would draw the line supposedly distinguishing the quantities or numbers of entries adequate for demonstrating a “consistent trade” or an ability to participate meaningfully in the retail end of the U.S. market. Dongtai states that single season quantities are neither meaningless nor commercially insignificant.

Dongtai argues that the petitioners incorrectly compare Dongtai’s entry price with the AUV, because the entry prices can be either FOB prices or prices under other sales terms that may include ocean freight (CNF) or even U.S. inland freight (DDP). Consequently, Dongtai argues, comparison of its POR price to customs entry AUVs does not constitute evidence that the price of its POR sale is not *bona fide*. Dongtai contends that even if the Department were able to confirm that each of the non-new shipper entry AUVs represented actual prices of arm’s-length sales to unaffiliated U.S. importers, the petitioners have failed to articulate any rational connection between their observations and their implied conclusion that the price of Dongtai’s POR sale is “extremely distortive” or not “commercially reasonable.”

Dongtai asserts that it set its POR sale price via its typical and commercially reasonable, normal pricing procedures (*i.e.*, through discussions with potential customers, as well as consideration of production costs, profit, *etc.*). Dongtai argues that the Department correctly used the gross weight of its sale to calculate the relevant AUV, because the packaging is part of the subject merchandise. Dongtai cites the Calculation Memorandum in Certain Preserved Mushrooms from the People’s Republic of China, where cans containing the mushrooms are considered part of the product, and not packing materials. See Dongtai’s Rebuttal Brief at 8. Dongtai argues that the petitioners failed to consider Dongtai’s terms of sale and that the correct AUV of its POR sale is lower than the petitioners’ calculation. Furthermore, Dongtai points out that its post-POR price was higher than the POR sale price.

Dongtai claims that entry quantities are not relevant to a meaningful comparison. Dongtai argues that it is the quantity of the arm’s-length sale to the first unaffiliated customer that counts. Dongtai states that the petitioners have not articulated why the quantity of Dongtai’s sale is too small to be *bona fide*. Dongtai argues that its sale was too large to be a sample sale and that it is a normal commercial quantity for a sale to an unaffiliated customer. Dongtai states that there is nothing atypical or abnormal about tailoring sales quantities to a customer’s needs. Furthermore, Dongtai argues, it is entirely normal for the development of a market and customer base to take time. Dongtai states that no reasonable business person would buy a very large quantity of a new product from a new seller. Dongtai asserts that it is commercially reasonable that a new seller’s first sale might be of a smaller quantity than its subsequent sales, after it establishes its reputation and market position. Finally, Dongtai contends that the POR sales quantity is just one of many things the Department considers, and it must be analyzed within the context of the totality of circumstances.

Dongtai states that the Department compared two different sales of an identical product in identical packaging, both consisting of significant and commercially reasonable quantities, shipped by the same seller, between the same two countries, over a period of less than one year. Dongtai contends that there is no rational basis for the petitioners' claim that because the POR and post-POR sales quantities were different, any comparison of the prices is invalid.

With regard to its importer, Dongtai states that the Department has no legal authority to compel cooperation on the part of U.S. importers that are neither parties to antidumping proceedings nor affiliates of parties to antidumping proceedings, but simply happened to purchase goods from companies that are parties to antidumping proceedings. Dongtai asserts that it cannot be held responsible for the degree of cooperation of its unaffiliated U.S. customers. Dongtai contends that a respondent is not expected to assume the responsibility of investigating the details of an unaffiliated U.S. customer's business dealings when it is trying to sell its product. Dongtai states that the unrelated dealings of its unaffiliated U.S. customers should have no bearing on the Department's analysis of Dongtai's legitimacy as a new shipper located in the PRC. Dongtai affirms that it had no deals with its U.S. customer prior to the POR. Dongtai argues that while its importer may have misunderstood the definition of affiliation, this does not support the petitioners' assertions that Dongtai "withheld critical information from the Department," "intentionally obfuscated the record" and "refused to answer crucial questions posed by the Department." Dongtai disputes the petitioners' claim that information developed at verification supports the conclusion that the post-POR sale was devised to avoid the payment of antidumping duties.

Department's Position:

We agree with respondent, in part. In the Preliminary Results, the Department stated that in considering the totality of circumstances surrounding Dongtai's new shipper sale, we found the sale to be *bona fide*; this is despite the irregular nature of retail-packed honey sales into the United States market - a commercial transaction which petitioners heavily contend is aberrational and commercially unreasonable. However, petitioners' main contention rests on a hypothesis that it is virtually impossible for honey to be sold in the United States in retail-packaging, simply because honey is predominantly sold in bulk. We agree with petitioners in so far that typical sales of honey into the United States are packed in bulk drums and sold to large processors. However, we disagree with petitioners that it is a virtual impossibility for honey, pre-packaged in retail bottles, to be commercially unreasonable simply because it is not sold in the identical manner as the majority of other honey sales to the United States. Indeed, the Department has seen in this review that these sales were ultimately destined to, and sold to, small groceries and food stores in the United States. There is no record evidence indicating that these sales are commercially unreasonable. Moreover, in making an assessment as to the *bona fide* nature of a producer's/exporter's sales, the Department is guided by precedents which do not necessarily obligate it to examine whether the sale is commercially atypical of an entire market and country, but rather if the sale is commercially atypical of the producer's/exporter's business practices. See Tianjin Tiancheng Pharm. Co. v. United States, 366 F. Supp. 2d 1246, 1249 (Court of

International Trade (CIT), 2005) (TTPC), where the CIT affirmed the Department's practice of considering that "any factor which indicates that the sale under consideration is not likely to be typical of those which the producer will make in the future is relevant." Moreover, the Department examines whether the transaction is "commercially reasonable" or "atypical" or "unrepresentative of a normal business practice." See Am. Silicon Techs. V. United States, 110 F. Supp. 2d 992, 995-996 (CIT 2000) (Silicon Techs).

The Department reported at the Preliminary Results that Dongtai's sale was made to an unaffiliated U.S. importer at an average unit price and quantity that the Department found to be comparable to the majority of sales of retail-packed honey entered into the United States from the PRC during the POR. See Eighth Antidumping Duty New Shipper Review of the Antidumping Duty Order on Honey from the People's Republic of China: *Bona Fide* Analysis of Dongtai Peak Honey Industry Co., Ltd, dated December 21, 2006 (Dongtai *Bona Fides* Memo), at pages 2 through 4. Additionally, the Department explained that during verification, it had also verified Dongtai's U.S. sale of retail-packed honey made after the POR and found that the post-POR sale was sold in identical packaging of two sizes of bottles, and was sold at the exact same price as or higher than the POR sale (*i.e.*, not aberrational). Id. Furthermore, the Department verified that Dongtai made multiple sales of retail-packed honey to third-country markets at comparable prices and quantities, thereby indicating that sales of retail-packed honey are part of Dongtai's ordinary course of business. Id.

Contrary to petitioners' claim, one of the factors in finding QMD's sale to be non-*bona fide* was that QMD had made no other sales of retail-packed honey to the United States or third-country markets either during or after the POR. As such the Department found QMD's sale to be atypical of its normal business practice. See Department Position at Comment 4, above. In contrast to QMD's sale, Dongtai's subject sale and post-POR sale(s) gives evidence not to the fact that Dongtai is "claiming to have sold {retail-packed honey} in a manner representative of its future commercial practice," as claimed by petitioners in their case brief, but instead that Dongtai already does sell its retail-packed honey in that manner.

We note the validity of petitioners' argument that the Department should have based its analysis of Dongtai's sale on the net weight rather than the gross weight of the sale. After reviewing this issue, the Department has determined that the data reported to U.S. Customs and Border Protection (CBP), upon which the Department based the *bona fides* analysis of Dongtai, is inconsistent. Petitioners are correct that the Department's analysis was based on the gross weight of Dongtai's shipment and not the net weight, ascertainable from the Customs Form 7501 on the record of this review. See Dongtai Peak's Section A Questionnaire Response, dated March 11, 2006, at Exhibit A-8. Similarly, petitioner is correct that the Department's analysis with regard to QMD was based on the net weight of QMD's shipment and not the gross weight. Again, we confirmed this from the Customs Form 7501 on the record of QMD's new shipper review. See QMD's Section A Questionnaire Response, dated March 11, 2006, at Exhibit A-8. Revising the quantity of Dongtai's sale to use the net weight in our analysis does, in fact, increase Dongtai's average unit price. See Petitioners' Case Brief at 10.

Petitioners indicate that this increase in Dongtai's average unit price must necessarily make Dongtai's sale aberrational. However, the Department does not reach this same conclusion based on the evidence on the record of this review. As previously stated, the Department was able to confirm from the Customs Entry Summaries (Form 7501) that the quantity of Dongtai's new shipper sale reported to CBP was the gross weight, and, furthermore, that the quantity of QMD's sale reported to CBP was the net weight. However, we note that this is only discernable by examining the 7501 entry forms. There is no indication as to whether the remaining imports of retail-packed honey during the POR are reported on a net weight or gross weight basis. As such, there is no information available to the Department that would indicate that either the quantities of QMD's or Dongtai's sales are incorrectly reported, as both are sales of retail-packed honey. The fact that the quantities are not reported on an identical basis in this instance requires further evidence to ascertain whether the remaining retail honey imports were reported on a gross or net weight basis - evidence which is not available. Regardless, were the Department to re-evaluate its *bona fides* analysis of Dongtai based on the net weight of Dongtai's sale, the next step of analysis would be the determination of whether Dongtai's resulting average unit price increase constitutes a "commercial outlier" in relation to the average unit values of all other retail-packed honey imports.

In analyzing the prices, the Department disagrees with petitioners' argument that we should remove the sales of QMD and Dongtai from the AUV analysis. Removing these sales would limit the universe of imports of the subject merchandise and would be, quite simply, skewed and not reflective of total commercial activity. More to the point, we find that Dongtai's sale, even if based upon a recalculated, higher average unit price, is still *bona fide* in this context. We note that the quantity of the sale, regardless of whether it is based on gross weight or net weight, is still comparable to the quantities of all other imports of retail-packed honey. Moreover, the quantity is still comparable to the quantities of Dongtai's post-POR sales made to the United States and third-country markets; and, therefore, are commercially reasonable. Additionally, we find that the average unit price of Dongtai's new shipper sale does not increase to a point where we would consider it to be aberrational in relationship to the other imports of retail-packed honey entered into the United States during the POR. Indeed, there remain several imports in the full analysis that are entered at higher average unit prices and lower quantities than those of Dongtai's new shipper sale. Therefore, within the context of the price, quantity, timing and payment of Dongtai's new shipper sale, the Department continues to find the sale to be *bona fide* and within the commercial realities of Dongtai's normal course of business.

With regard to petitioners' concerns surrounding the U.S. importer, it remains evident to the Department that in the instant review, the importer of record provided full responses to the Department's questions in both questionnaires encompassing corporate history, organization and ownership. See Importer-Specific Questionnaire, dated February 9, 2006; see also Importer-specific Supplemental Questionnaire, dated March 29, 2006, at 1-8 and Exhibits 9-10. Moreover, the Department conducted extensive questioning and research regarding the importer of record during its verification of Dongtai's sales and factors of production responses. In neither case did the Department find evidence that Dongtai had colluded with the importer to set the

price and sales terms of the new shipper sale for the purpose of dumping retail honey into the United States and, ultimately, to allow the importer to bypass payment of antidumping duties as petitioners allege. We have reviewed and verified the information provided by both Dongtai and the importer of record, and there is no evidence indicating that a) the two entities are affiliated, b) Dongtai had made previous sales of subject merchandise to this importer, or c) the importer coordinated the price and quantity of Dongtai's new shipper sale with the express interest of manufacturing a margin to evade dumping duties at a later date.

Based on the arguments and analysis above, the Department continues to find Dongtai's new shipper sale to be *bona fide* for these final results.

Comment 5: Surrogate Value for Cartons

Dongtai argues that the tariff classification the Department used for the SV for cartons, HTS 481910, is overly broad because it includes boxes and cartons of corrugated paper and paperboard. Instead, Dongtai claims that it is more appropriate to use HTS 48191090 as it is more specific to the type of cartons used for honey packing. Moreover, Dongtai adds that it does not use boxes to pack retail honey.

The petitioners agree with Dongtai that it would be more accurate to use HTS 48191090, stating that Dongtai has documented that it uses cartons, and that cartons appear to be the correct sub-type of corrugated container. The petitioners cite Dongtai's March 11, 2006, Section A questionnaire response at Exhibit A-5 and the March 30, 2006, Section D questionnaire response at D-13. However, the petitioners argue that there is a significant clerical error in Dongtai's calculation of the net volume denominator of the Indian import data, and that the correct AUV for Indian imports of cartons in the POR is Rs. 172.83 per kg, rather than Rs. 58.77 per kg calculated by respondents. The petitioners argue that the Indian import data for the more specific carton subcategory is fully contemporaneous with the POR and that the use of greater specificity in this case does not require the Department to compromise contemporaneousness. In addition, the petitioners note that Indian imports of cartons are substantial, even after removing subsidized imports and imports from non-market economy countries. The petitioners conclude that HTS 48191090 imports are the most accurate and specific data available, as these data are fully contemporaneous with the POR, and are based on many significant observations. Petitioners contend that these data are the best information available to the Department and therefore, the Department should use these data, after correcting for Dongtai's calculation error, for the final results of review.

Department's Position:

We agree with respondent and petitioners that the appropriate HTS category for calculating the surrogate value of cartons is HTS 48191090, and not the broader classification of HTS 481910, which the Department used in its preliminary results. We further agree with petitioners that Dongtai erred in its calculation of the unit value of cartons under the more specific HTS

classification. *See* Respondents' Surrogate Value Submission, dated September 20, 2006, at Exhibit 18. Respondent utilized the incorrect total quantity of cartons (in kilograms, sourced from World Trade Atlas (WTA) data) imported into India in its calculations (i.e., 1,416,440 kilograms). Under the HTS 48191090 classification, the total quantity (before deducting those imports from non-market/subsidized economy countries) of Indian imports during the POR is 613,037 kilograms. As such, the Department has relied on the data under the more specific classification of HTS 48191090 and revised its calculation of the surrogate value for cartons from Rs. 135.47 per kg. to Rs. 172.83 per kg., accordingly.

RECOMMENDATION:

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of these reviews and the final weighted-average dumping margins of the reviewed companies in the Federal Register.

Agree _____ Disagree _____

David M. Spooner
Assistant Secretary
for Import Administration

Date