



A-570-863
NSR: 12/01/14 – 11/30/15
Public Document
E&C/V: CB

March 24, 2017

MEMORANDUM TO: Gary Taverman
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

FROM: James Doyle
Director, Office V
Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Rescission of the
Antidumping Duty New Shipper Review of Honey from the
People's Republic of China: Shanghai Sunbeauty Trading Co. Ltd.

SUMMARY

The Department of Commerce (Department) analyzed the case and rebuttal briefs submitted by interested parties in the new shipper review (NSR) of Shanghai Sunbeauty Trading Co. Ltd. (Sunbeauty), with respect to the antidumping duty order on honey from the People's Republic of China (PRC), for the period of review (POR) December 1, 2014, through November 30, 2015. Based on this analysis, we have not revised our *Preliminary Rescission*¹ decision to rescind the NSR of Sunbeauty. We recommend that you approve the positions described in the "Discussion of Issues" section of this memorandum.

BACKGROUND

The Department published its *Preliminary Rescission* of this NSR on December 6, 2016.² On January 5, 2017, Sunbeauty submitted a case brief. On January 12, 2017, the Department rejected the case brief for containing new factual information.³ On January 13, 2017, Sunbeauty re-submitted its case brief with the portions of new factual information redacted.⁴ On January

¹ See *Honey from the People's Republic of China: Preliminary Intent to Rescind New Shipper Review*, 81 FR 87906 (December 6, 2016) (*Preliminary Rescission*).

² *Id.*

³ Letter to Sunbeauty from Catherine Bertrand, Program Manager, Office V, entitled, "New Shipper Review: Honey from the People's Republic of China – Rejection of Case Brief Containing New Information," dated January 12, 2017.

⁴ Letter to the Secretary of Commerce from Sunbeauty, entitled, "Honey from the People's Republic of China: Re-Submission of Sunbeauty's Case Brief," dated January 13, 2017 (Sunbeauty's Case Brief).



18, 2017, Petitioners⁵ submitted a rebuttal brief.⁶

SCOPE OF THE ORDER

The products covered by the order are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise subject to the order is currently classifiable under subheadings 0409.00.00, 1702.90.90 and 2106.90.99 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under order is dispositive.

DISCUSSION OF THE ISSUES

Issue : *Bona Fide Nature of Sunbeauty's Sales*

Sunbeauty's Comments:

- For its *bona fides* analysis, the Department should not base its comparison, in part, on the HTSUS code under which Sunbeauty's importer entered its honey because Sunbeauty should not be held responsible for how its importer entered the merchandise or that its importer failed to provide the Department with images of the merchandise.
- Sunbeauty's purchase order and the packaging size of its honey in comparison to other honey on the record also support a comparison of the entry of Sunbeauty's honey to other POR entries, rather than the entries used for purposes of comparison in the *Preliminary Rescission*.⁷
- The Department's methodology in the *Preliminary Rescission* which compared the weighted-average quantity and unit value of Sunbeauty's entries with the weighted-average quantity and unit value of other entries of subject merchandise under HTSUS subheading 0409 and a more specific HTSUS code as found in Customs and Border Protection (CBP) data, in order to determine whether Sunbeauty's entries were commercially reasonable is "inappropriate," "incorrect" and biased because the comparison was made against a small number of other POR entries."⁸
- The Department should adjust its methodology for determining whether Sunbeauty's entries are commercially reasonable by comparing the quantity and unit values of Sunbeauty's entries with the range of quantity and unit values as found in CBP data of

⁵ The American Honey Producers Association and Sioux Honey Association (collectively, Petitioners).

⁶ Argument before the International Trade Administration of the U.S. Department of Commerce, Honey from People's Republic of China from Petitioners, entitled, "Petitioners' Rebuttal Brief," dated January 18, 2017 (Petitioners' Rebuttal Brief).

⁷ Due to the proprietary nature of this discussion, some of the parties' arguments are addressed in a proprietary memorandum issued concurrently with this memorandum. See Memorandum to the File, entitled, "Business Proprietary Information Memo for Shanghai Sunbeauty Trading Co., Ltd.," dated concurrently with this memorandum at Note 1 (Final BPI Memo) and at Note 2.

⁸ Sunbeauty's Case Brief at 8.

entries under HTSUS subheading 0409.

- The Department should follow the practice in *Fish Fillets from Vietnam 2011-2012 New Shipper Review*, where the sale under review was considered *bona fide* because it was not the largest recorded entry and three percent of the prices of other entries were higher than the sale under review, according to CBP data.⁹
- Sunbeauty's responses to the Department's questions regarding the lump sum fee paid to its Chinese customs broker are not inconsistent as the Department characterized them, but rather reflect the different perspectives of Sunbeauty and its broker; therefore, Sunbeauty's responses demonstrate Sunbeauty's lump sum fee is a normal and typical business expense.
- The price and quantity of Sunbeauty's sales to its importer are indicative of the typical and normal business practices of Sunbeauty's importer despite significant differences in price and quantity between Sunbeauty's sales and its other purchases when the law of supply and demand is taken into account.
- The failure of Sunbeauty's importer to provide supporting documentation for its other purchases of subject merchandise during the POR should not increase the Department's concerns as to the *bona fide* nature of Sunbeauty's sales, because it does not otherwise affect the Department's analysis.
- The failure of Sunbeauty's importer to provide its requested accounting information should not increase the Department's concerns as to the *bona fide* nature of Sunbeauty's sales, because other business documents provided by its importer create a solid and reliable basis upon which the Department can verify the related import expenses.
- Sunbeauty's failure to provide the documentation from U.S. authorities regarding detention or testing of its honey exports should not increase the Department's concerns as to the *bona fide* nature of Sunbeauty's sales, because the Department failed to understand the terms of payment were not dependent on such detention or testing; and nonetheless, Sunbeauty provided other documentation indicating whether such detention or testing took place.
- The discrepancy on Sunbeauty's invoices regarding production date was merely a clerical error made months before this new shipper review was initiated and does not reflect any negligence by Sunbeauty in preparing its questionnaire responses; and therefore, should not raise any concerns about Sunbeauty's submissions to the Department or the *bona fide* nature of its sales.

Petitioners' Comments:

- The Department should continue to use the HTSUS number specific to the record description of Sunbeauty's as it did in the *Preliminary Rescission* in determining whether Sunbeauty's sales are *bona fide*, because the record including entry documentation supports doing so and Sunbeauty is responsible for creating a complete record to support its arguments, which it failed to do.
- The Department's reasoning for its use of the HTSUS number specific to the record description of Sunbeauty's honey in its analysis is not undermined by Sunbeauty's claim

⁹ *Id.* at 10 (citing *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty New Shipper Reviews; 2011-2012*, 78 FR 6297 (January 30, 2013) (*Fish Fillets from Vietnam 2011-2012 New Shipper Review*)).

that the size of other honey on the record supports the use of a different HTSUS number for determining whether its sales are *bona fide*.

- Contrary to Sunbeauty’s claim, the Department has no consistent practice to rely on the range of quantity and unit value of entries as found in CBP data over the weighted average of quantity and unit value of entries as found in CBP data as a comparison for determining whether a sale is *bona fide*.
- Each of the cases Sunbeauty cites for using the range of quantity and unit value of entries as found in CBP data as a comparison instead of the weighted average of quantity and unit value of entries as found in CBP data consider the totality of the circumstances, including “outlier” entries and a “gradual curve” in pricing, not present here, which makes them unsuitable support.¹⁰
- The Court of International Trade (CIT) has affirmed the Department’s practice to compare the weighted average quantity and unit value of entries as found in CBP data and not ranges or other subsets of data.¹¹
- Sunbeauty’s explanations regarding the lump sum fee paid to its Chinese customs broker are not sufficient to resolve the ambiguity identified by the Department in its *Preliminary Rescission*, and as such, the Department should continue to consider that this unexplained expense contributes to a finding that Sunbeauty’s sales are non-*bona fide*.
- Sunbeauty provides no support for its argument that the price and quantity of its sales to its importer are indicative of normal business practices when the law of supply and demand is taken into account; furthermore, Sunbeauty’s argument undermines its position that the price its importer paid is representative of prices it will pay in the future and demonstrates the factual situation that the *bona fides* sales analysis is meant to protect against.
- The failure of Sunbeauty’s importer to provide documentation concerning its other purchases and payment of customs duties should continue to raise concerns as to the *bona fide* nature of Sunbeauty’s sales in the Department’s final results, because such information aids the Department’s analysis in determining whether the sales are atypical and Sunbeauty should not be allowed to benefit from its failure to cooperate with the Department’s request.
- There is no record evidence supporting Sunbeauty’s argument that its failure to provide the documentation from U.S. authorities regarding detention or testing of its honey exports should not increase the Department’s concerns as to the *bona fide* nature of Sunbeauty’s sales, and as such, the Department should continue to have such concerns in its final results.
- The Department should continue to find that the discrepancy on Sunbeauty’s invoices concerning production date raises concerns about the other information Sunbeauty has placed on the record of this review, including those prepared in the normal course of business.

Department’s Position: For the reasons detailed herein, we continue to find that Sunbeauty’s sales are non-*bona fide*. Section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act)

¹⁰ Petitioners’ Rebuttal Brief at 10.

¹¹ *Id.* at 9 (citing *Jinxiang Chengda Import & Export Co. v. United States*, Slip Op. 2013-14 at 9-11 (CIT March 25, 2013) and *Zhengzhou Huachao Industrial Co. v. United States*, Slip Op. 2013-61 at 18-22 (CIT May 14, 2013)).

was recently amended to curb what Congress viewed as abuse of the statute’s NSR provision.¹² Congress expressed concern that NSRs, which allow new exporters and producers to obtain their own individual weighted-average dumping margin or individual countervailing duty rate from the Department on an expedited basis, had been abused by new exporters and producers to secure low cash deposit rates that are not reflective of their future commercial behavior.¹³ In particular, Congress expressed concern over the ability of new exporters or producers to enter into a scheme to structure a few sales to show little or no dumping when those sales are reviewed by the Department during a new shipper review, resulting in a low or zero antidumping or countervailing duty rate for that producer or exporter.¹⁴ An importer could then bring in that producer’s or exporter’s merchandise at highly dumped or subsidized prices, but with little or no cash deposit.¹⁵

To prevent this, Congress amended the Act by adding section 751(a)(2)(B)(iv), which creates the requirement that U.S. sales that serve as the basis of a weighted-average dumping margin in an NSR be *bona fide* sales and sets forth criteria for considering whether sales are *bona fide*.¹⁶ Thus, pursuant to section 751(a)(2)(B)(iv) of the Act, any weighted-average dumping margin determined in an NSR must be based solely on *bona fide* sales during the POR.¹⁷ This requires an affirmative determination, supported by evidence on the record, for the Department to determine a weighted-average dumping margin in this new shipper review.

To determine whether a sale in a NSR is *bona fide*, the Department is statutorily obligated to consider, “depending on the circumstances surrounding such sales”:

(I) the prices of such sales; (II) whether such sales were made in commercial quantities; (III) the timing of such sales; (IV) the expenses arising from such sales; (V) whether the subject merchandise involved in such sales was resold in the United States at a profit; (VI) whether such sales were made on an arms-length basis; and (VII) any other factor {it} determines to be relevant as to whether such sales are, or are not, likely to be typical of those the exporter or producer will make after completion of the review.¹⁸

Section 751(a)(2)(B)(iv)(VII) of the Act directs the Department to consider any factors that the Department determines are relevant to assessing whether a sale is likely to be typical of a new shipper’s future sales. Although some *bona fides* issues may share commonalities across various administrative cases, the Department examines the *bona fide* nature of a sale on a case-by-case

¹² See Section 433 of the Trade Facilitation and Trade Enforcement Act of 2015, Pub. Law 114-125 (Feb. 24, 2016) (adding a new section 751(a)(2)(B)(iv) entitled, “Determinations based on *bona fide* sales”); see also H. Rpt. No. 114-114 (2015) (May 14, 2015) at 89.

¹³ See H. Rpt. No. 114-114 (2015) (May 14, 2015) at 89.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See Section 751(a)(2)(B)(iv) of the Act.

¹⁸ *Id.*

basis, and the analysis may vary with the facts surrounding each sale.¹⁹ The CIT has affirmed the Department's practice of examining objective, verifiable factors in a *bona fides* analysis to ensure that a sale is not being made to circumvent an antidumping duty order.²⁰ A prospective new shipper is, therefore, on notice that it is unlikely to establish the *bona fides* of a sale merely by claiming to have sold in a manner representative of its future commercial practices.²¹ As such, in order for a new shipper to demonstrate under the statute that its sales are *bona fide*, it must provide the Department with objective, record evidence concerning "the circumstances surrounding such sales."²²

Quantity and Value Comparisons

With respect to the Department's position in the *Preliminary Rescission* regarding the basis of comparison used in its *bona fides* analysis of the quantity and value of Sunbeauty's entries of subject merchandise, Sunbeauty raises two points. First, Sunbeauty argues that the record does not support the Department's decision to compare Sunbeauty's entries to data under the HTSUS most specific to the record description of the sales under review.²³ Second, Sunbeauty argues that the Department should not rely on the weighted-average quantity and unit value of Sunbeauty's entries in comparison to the weighted-average quantity and unit value in CBP data of the entries under the HTSUS the Department found most specific to the record description of the sales under review. Instead, Sunbeauty asserts that the Department should base its *bona fides* analysis solely on the range of quantity and unit value in CBP data for HTSUS subheading 0409 (Natural Honey).²⁴ As explained further below, we disagree.

Pursuant to section 751(a)(2)(B)(iv)(I) of the Act, the Department examines the prices associated with the sales under review. In doing so, the Department determines whether all aspects of the prices were based on normal commercial considerations and present an accurate picture of a company's typical sales activity.²⁵ Otherwise, the respondent may benefit from obtaining a low dumping margin based on an atypical price that does not reflect the respondent's usual commercial practices.²⁶ If the Department determines that the prices were not based on normal commercial considerations or are atypical of the respondent's future sales, the sales may be considered non-*bona fide*.²⁷ Similarly, pursuant to section 751(a)(2)(B)(iv)(II) of the Act, the Department examines the quantity of the sales under review.

In determining whether an export price (EP) sale is based upon normal commercial realities or is

¹⁹ See *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1340, n.5 (CIT 2005) (*New Donghua*), citing *Tianjin Tiancheng Pharmaceutical Co. v. United States*, 366 F. Supp. 2d 1246, 1263 (CIT 2005) (*TTPC*); *Certain Preserved Mushrooms from the People's Republic of China: Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review*, 68 FR 41304 (July 11, 2003) and accompanying Issues and Decision Memorandum at Comment 2.

²⁰ See *New Donghua*, 374 F. Supp. 2d at 1339.

²¹ *Id.*

²² Section 751(a)(2)(B)(iv) of the Act; see also *New Donghua*, 374 F. Supp. 2d at 1339.

²³ See Sunbeauty's Case Brief at 5-6; Final BPI Memo at Notes 1 and 2.

²⁴ *Id.* at 7.

²⁵ See also *TTPC*, 366 F. Supp. 2d at 1250; see also *American Silicon Techs. v. United States*, 110 F. Supp. 2d 992, 995 (CIT 2000); *Windmill Int'l Pte., Ltd. v. United States*, 193 F. Supp. 2d 1303, 1307 (CIT 2002) (*Windmill*).

²⁶ *Id.*

²⁷ *Id.*

a reliable indicator of future activity, the Department may, in the course of a *bona fides* analysis, compare a respondent's selling price and quantity during the POR to sales made by other exporters during the POR, or a respondent's own sales, whether these were made to third country markets or to the United States after the POR.²⁸ Neither the statute nor the Department's regulations dictate the particular manner in which the Department will conduct a price and/or quantity analysis in an NSR. It is the Department's practice in this and many other proceedings to base its price and quantity comparison on other U.S. POR entries of subject merchandise as reported by CBP, when available.²⁹ The Department has followed that practice in the *Preliminary Rescission* and for this final decision.

Furthermore, as we explained in the Preliminary *Bona Fides* Memo, the Department has previously found it appropriate to use not only the HTSUS more specific to the record description of the sales under review for purposes of its *bona fides* comparison, but also to compare them to U.S. entries from the appropriate broader HTSUS subcategory.³⁰ In this review, that would be HTSUS subheading 0409, Natural Honey. We evaluated the *bona fides* of the sales under review by comparing the reported price and quantity to data from imports of honey under the most closely matching HTSUS category, because this provides a comparison of the most similar products. At the same time, as Sunbeauty advocates, we also compared Sunbeauty's price and quantity information to data from imports under the broader subheading 0409, in order to conduct our analysis with additional data points. As such, our resulting analysis looks at the *bona fides* of Sunbeauty's sales from a narrower view by comparing them with data from honey in the HTSUS category most similar to the honey on the record, here, as well as a higher level of aggregation by comparing them with data from honey in the broader HTSUS subheading.³¹ We disagree with Sunbeauty's contention that the Department should not derive its basis of comparison from the importer's reporting of the entered merchandise, because the Department is required to make its determination based on a consideration of all record evidence, which the Department has done in deciding which HTS categories to use as a basis for comparison. Furthermore, regarding quantity comparisons for the broader HTSUS category, Sunbeauty placed no evidence on the record regarding the significance of the relative package size of its honey compared to other honey on the record. We agree with Petitioners that it is Sunbeauty's responsibility to create an adequate and complete record to support its argument that the HTSUS code used by the Department for purposes of its comparison is not the most specific to the sales under review.³² Here, as additionally explained in the Preliminary *Bona Fides* Memo, the record supports a comparison to the more specific HTSUS code.³³

²⁸ See *TTPC*, 366 F. Supp. 2d at 1250.

²⁹ See, e.g., *Certain Steel Nails from the People's Republic of China: Final Rescission of Antidumping Duty New Shipper Review*, 76 FR 75871 (December 5, 2011); *Fresh Garlic from the People's Republic of China: Final Rescission of New Shipper Reviews of Jining Yifa Garlic Produce Co., Ltd., Shenzhen Bainong Co., Ltd., and Yantai Jinyan Trading Inc.*, 76 FR 52315 (August 22, 2011).

³⁰ Memorandum to James C. Doyle, Director, Office V from Carrie Bethea, International Trade Compliance Analyst, Office V, entitled, "*Bona Fides* Analysis of Honey from the People's Republic of China for Shanghai Sunbeauty Trading Co., Ltd.," dated November 30, 2016 (Preliminary *Bona Fides* Memo) at 4.

³¹ See Final BPI Memo at Notes 1 and 2.

³² Petitioners' Rebuttal Brief at 6 (citing *QVD Food Co. v. United States*, 658 F.3d 1317, 1324 (Fed. Cir. 2011)); see also Final BPI Memo at Notes 1 and 2.

³³ *Id.*; see also Preliminary *Bona Fides* Memo at 4-5; see also Memorandum to the File, entitled, "United States Customs and Border Protection POR Data," dated November 30, 2016 (CBP Data Memo POR Sales).

We also agree with Petitioners that, while the Department may, in some cases, compare a new shipper's sales price and quantity to the range of entries in CBP data, we have no consistent practice to do so as Sunbeauty claims.³⁴ Furthermore, the Department has no practice whereby a comparison of a new shipper's average quantity and unit price to the range of prices and quantity as found in CBP data is determinative over a comparison to the weighted-average quantity and unit price as found in CBP data.³⁵ The CIT has affirmed that the Department is not required to evaluate the range of values for CBP entries, but, rather, may instead compare a new shipper's prices with only the weighted-average unit value.³⁶

Further, the cases on which Sunbeauty relies to advance its argument that range is a meaningful measure of the *bona fide* nature of its sales to the United States do not apply here, given the CBP data on the record for this POR.³⁷ The CIT has cautioned against comparing a new shipper's sale price exclusively to the prices at the top of the range of comparison prices, because doing so can provide misleading results regarding the sale's commercial reasonableness.³⁸ Sunbeauty's entries are unlike those in *Freshwater Crawfish from the PRC*, where the Department compared the new shipper's sales price and quantity to the range of entries in CBP data and found that the price was similar to other prices and the quantity was similar to other entries.³⁹ The Department has found that "a range of comparison prices may contain outliers and aberrational values" that preclude an analysis based on range.⁴⁰ The Department has previously looked at the range of entries when there is a gradual curve in pricing or where there were entries with similar quantities and prices, not merely where the quantity and price of the sales under review exist within the range of CBP data.⁴¹ No such pattern exists here.⁴²

As such, the Department continues to find that our decision to compare the price and quantity of Sunbeauty's entries to the HTSUS more specific to the record description of the sales under review and also to compare them to U.S. entries from the appropriate broader HTSUS subcategory (subheading 0409, Natural Honey), for purposes of its *bona fides* analysis, is appropriate and consistent with the Department's practice. We additionally find that our choice to compare Sunbeauty's sales to the weighted-average quantity and unit value for those entries as found in CBP data and not to rely on the range of prices and quantity as found in CBP data for purposes of our *bona fides* analysis is consistent with Department practice and upheld by the

³⁴ See Petitioners' Rebuttal Brief at 9.

³⁵ *Id.*

³⁶ *Id.* (citing *Jinxiang Chengda Import & Export Co. v. United States*, Slip Op. 2013-40 at 9-11 (CIT March 25, 2013) and *Zhengzhou Huachao Industrial Co. v. United States*, Slip Op. 2013-61 at 18-22 (CIT May 14, 2013)).

³⁷ See, e.g., Sunbeauty's Case Brief at 9-10 (citing *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews*, 74 FR 11349 (March 17, 2009) (*Frozen Fish Fillets from Vietnam*) and *Freshwater Crawfish Tail Meat from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2013-2014*, 80 FR 60624 (October 7, 2015) (*Freshwater Crawfish from the PRC*)); see also BPI Memo at Note 3.

³⁸ See *Jinxiang Chengda Import & Export Co. v. United States*, Slip Op. 2013-40 at 14-18 (CIT March 25, 2013); *Zhengzhou Huachao Industrial Co. v. United States*, Slip Op. 2013-61 at 31-34 (CIT May 14, 2013).

³⁹ See CBP Data Memo POR Sales; see also Petitioner's Rebuttal Brief at 13.

⁴⁰ See *Multilayered Wood Flooring from the People's Republic of China: Rescission of Antidumping Duty New Shipper Reviews; 2014-2015*, 81 FR 7439 (October 26, 2016) and accompanying Issues and Decision Memorandum at 6-7.

⁴¹ See generally *Frozen Fish Fillets from Vietnam; Freshwater Crawfish from the PRC*.

⁴² See Preliminary *Bona Fides* Memo at 5-7; see also CBP Data Memo POR Sales.

CIT. Therefore, we continue to find the price of Sunbeauty's sales to be unusually high and the quantity to be unusually low, indicating the sales under review are non-*bona fide*.^{43 44}

Expenses Arising from the Sales

Sunbeauty argues that the Department mischaracterized its questionnaire response with respect to the lump sum fee it paid its broker as part of an export related expense.⁴⁵ As explained further below, we disagree. As an initial matter, as noted above, pursuant to section 751(a)(2)(B)(iv) of the Act, the Department may consider the expenses arising from the sales under review when conducting our *bona fides* analysis.⁴⁶

Sunbeauty argues that its responses are not inconsistent, but, rather, reflect the different perspectives of Sunbeauty and its broker as to what the lump sum fee constituted.⁴⁷ Sunbeauty's responses that characterized the lump sum fee as, alternately, an explicit payment for fees associated with export *and* as a payment for services rendered, do not equate to differing perspectives, but rather two inconsistent statements by Sunbeauty on the record.⁴⁸ As explained in the Preliminary *Bona Fides* Memo, the Department considers freight expenses associated with shipments of subject merchandise to be a factor in examining whether or not a sale is *bona fide*.⁴⁹ In seeking this information in this NSR, the Department is attempting to ascertain what the expenses are and whether they are typical. Sunbeauty reported that it contracted with an unaffiliated logistics company to handle the logistics and export procedures of its sales of subject merchandise to the United States.⁵⁰ Sunbeauty, not its importer, paid for these export-related expenses.⁵¹ According to Sunbeauty, the unaffiliated logistics company invoiced Sunbeauty for a lump sum fee associated with each export, and Sunbeauty initially cited this fee as a service charge related to the "export procedure"⁵² and the "service provided (time consumed to process paperwork)."⁵³ When asked to detail all of the services included in the lump sum fee, Sunbeauty only stated that it includes a "custom clearance fee and drayage fee."⁵⁴ Sunbeauty also stated that the unaffiliated logistics company's cost structure and general market condition affect its quote for the lump sum fee, but failed to provide any documentation from the unaffiliated logistics company outlining its cost structure or the general market condition at the time such that it would have affected its quote.⁵⁵

⁴³ See generally Preliminary *Bona Fides* Memo

⁴⁴ See, generally, the Final BPI Memo at Notes 1, 2, and 3 for a further discussion on the Quantity and Value Comparisons.

⁴⁵ See Sunbeauty's Case Brief at 10-11.

⁴⁶ Section 751(a)(2)(B)(iv)(IV) of the Act.

⁴⁷ See Sunbeauty's Case Brief at 10-11.

⁴⁸ See Preliminary *Bona Fides* Memo at 8.

⁴⁹ *Id.*

⁵⁰ See Letter to the Secretary from Sunbeauty, entitled, "Honey from the People's Republic of China: Responses to Supplemental Section A Questionnaire," dated June 7, 2016 at 11.

⁵¹ *Id.*

⁵² *Id.*

⁵³ Letter to the Secretary from Sunbeauty, entitled, "Honey from the People's Republic of China: Responses to Supplemental Section AC Questionnaire," dated July 21, 2016 at 3 ("Supplemental SACQR").

⁵⁴ See Supplemental SACDQR at 3.

⁵⁵ *Id.*

As such, we agree with Petitioners that Sunbeauty's explanation does not resolve the Department's concern that Sunbeauty failed to explain the services rendered in association with this export expense.⁵⁶ Sunbeauty's inconsistent responses regarding the lump sum fee continue to contribute to our finding that Sunbeauty's sales are non-*bona fide*, because it is unclear what the nature of this lump sum fee is.

Price and Quantity of Sunbeauty's U.S. Importer's Other Honey Purchases

In its *Preliminary Rescission*, the Department addressed Sunbeauty's arguments that any price difference between its honey sales and its U.S. importer's other purchases of honey is accounted for by the volume, packing, and quality of its honey. Sunbeauty also argued that any quantity difference between its honey and its U.S. importer's other purchases of honey is accounted for because its sales were intended for a different end use. While we do not find the price and/or quantity of Sunbeauty's U.S. importer's purchases of honey from third country markets to weigh heavily in our analysis of whether the sales subject to the new shipper review are *bona fide*, the Department addressed the issue because Sunbeauty and its U.S. importer raised it. The Department found that none of Sunbeauty's arguments are supported by the information on the record.

In its case brief, Sunbeauty again raised the contention that the price and quantity of its U.S. importer's other honey purchases do not indicate that its sales are non-*bona fide*. Here, Sunbeauty argues that the law of supply and demand, defined in its own terms as the economic principle that "the price tends to drop when the supply increase" {sic}, shows that its U.S. importer's purchases from Sunbeauty were commercially reasonable relative to its other purchases, and would influence the price of future honey sales.⁵⁷ We agree with Petitioners that this argument undermines Sunbeauty's position that its sales under review are typical in quantity relative to its U.S. importer's other honey purchases and further undermines Sunbeauty's position that its sales under review are likely to be typical of those it will make after completion of the review, based on the purchasing habits of its U.S. importer from other suppliers during this POR.⁵⁸ Sunbeauty has also failed to place any evidence on the record supporting its view of how theory of supply and demand functions in this instance as support for its claim that its sales are *bona fide*.⁵⁹ The record does not contain any information about the level of the supply of Chinese honey in the United States or the level of demand in the United States for Chinese honey or how Sunbeauty reacted to that information in developing the price at which it sold the sales under review. Similar to Sunbeauty's confusion regarding causation and correlation concerning price and packaging which the Department noted in the Preliminary *Bona Fides* Memo, Sunbeauty has not presented either a correlation or causation support by record evidence.⁶⁰ Furthermore, we continue to find that none of Sunbeauty's arguments that the price and quantity difference between its sales to its U.S. importer and its U.S. importer's other purchases of honey are accounted for by the volume, packing, and quality of its honey are supported by the

⁵⁶ See Petitioners' Rebuttal Brief at 15; see also Preliminary *Bona Fides* Memo at 8.

⁵⁷ See Sunbeauty's Case Brief at 12-13.

⁵⁸ Petitioners' Rebuttal Brief at 16; for further reference as to the price and quantity sold, see the *Bona Fides Memo* at 5-6; Final BPI Memo at Note 4.

⁵⁹ See Petitioner's Rebuttal Brief at 16.

⁶⁰ *Id.*; see also Preliminary *Bona Fides* Memo at 11.

information on the record.⁶¹

Deficiencies and Discrepancies in Sunbeauty's Questionnaire Responses

With respect to Sunbeauty's argument that the deficiencies and discrepancies in its questionnaire responses should not raise additional concerns regarding the *bona fide* nature of Sunbeauty's sales, we disagree.⁶² As noted above, pursuant to section 751(a)(2)(B)(iv) of the Act, the Department may consider any factor it determines to be relevant as to whether such sales are, or are not likely to be typical of those the exporter or producer will make after completion of the review.⁶³

Sunbeauty argues that the Department should not consider its importer's failure to provide documentation concerning its other purchases and payment of customs duties because the information needed "to verify the price and quantity" of its purchases can be accomplished with other record evidence.⁶⁴ As stated in the Preliminary *Bona Fides* Memo, the Department requested this information from Sunbeauty's importer to determine whether the price and quantity of the sales subject to this NSR are not atypical and whether the subject sales provide a reasonable basis to calculate an AD margin, and because this information was not within any of the other record evidence cited by Sunbeauty.⁶⁵ Sunbeauty argues that, instead of the sales documentation it requested, the Department may rely on Sunbeauty's importer's responses alone without supporting documentation and the "indirect evidence" that its importer's other purchases are comparable to the CBP data on the record.⁶⁶ The Department's ability to evaluate whether full payment of all expenses surrounding the sale were made, including customs duties, is additionally necessary to examine whether the sale is atypical.⁶⁷ Sunbeauty argues that, because it provided other business documents referencing, in part, the payment by its importer of the customs duties for the sales under review, the Department need not be concerned that Sunbeauty failed to provide the general ledger showing the duties were paid.⁶⁸ However, this information is not directly responsive to the evidence requested by the Department. Failure to provide this alternative information hampers the Department's ability to evaluate the price, quantity, and import expenses associated with the sale and, thereby, increases the Department's concerns as to the *bona fides* of the sales.⁶⁹ As such, we continue to find that Sunbeauty's failure to provide documentation from its importer further undermines the *bona fide* nature of the sales under review.

Sunbeauty argues that the Department's concerns regarding its failure to provide the documentation from U.S. authorities regarding the detention or testing of its honey exports are

⁶¹ See generally Note 4 of the Final BPI Memo for a further discussion on the Price and Quantity of Sunbeauty's U.S. Importer's Other Honey Purchases.

⁶² See Sunbeauty's Case Brief at 13-16.

⁶³ Section 751(a)(2)(B)(iv)(VII) of the Act.

⁶⁴ Sunbeauty's Case Brief at 13.

⁶⁵ Preliminary *Bona Fides* Memo at 14.

⁶⁶ Sunbeauty's Case Brief at 13.

⁶⁷ Preliminary *Bona Fides* Memo at 14.

⁶⁸ Sunbeauty's Case Brief at 14; see Final BPI Memo at Note 6.

⁶⁹ Preliminary *Bona Fides* Memo at 14.

based on the Department's failure to understand the terms of payment.⁷⁰ The Department did not misunderstand Sunbeauty's terms of sale when seeking this information, but, rather, sought this information to clarify the record and inform its understanding of the conditions of payment.⁷¹ Here, the supporting documentation requested by the Department would have furthered the Department's understanding regarding whether payment was timely made subsequent to the sale or whether payment was made early pursuant to the terms of the sale. As stated in the Preliminary *Bona Fides* Memo, the purpose of the Department requesting this information from Sunbeauty is to evaluate the terms of payment for the sales.⁷² As such, the Department requested this information for the explicit purpose of furthering its understanding of the terms of payment and to use that understanding in its *bona fides* analysis. The information provided by Sunbeauty did not further this understanding.⁷³ We additionally agree with Petitioners that, while Sunbeauty points out other record evidence, such as e-mails from its customs broker which reference the terms of payment, this is not sufficient to assuage the Department's concerns as to the exact nature of the terms of payment as would be available had Sunbeauty submitted the appropriate documentation from U.S. authorities.⁷⁴ Accordingly, we continue to find that Sunbeauty's failure to provide documentation from U.S. authorities regarding the detention or testing of its honey exports further undermines the *bona fide* nature of the sales under review.⁷⁵

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The Department also disagrees with Sunbeauty's argument that the discrepancy on its invoices to its U.S. importer regarding production date are not indicative of a non-*bona fide* sale. Sunbeauty argues the discrepancy on its invoices should not raise concerns regarding its preparation and submission of documents to the Department during this review.⁷⁷ Sunbeauty, however, submitted these documents without initially informing the Department that these discrepancies existed because "{f}or {the} convenience of its own work, it did not physically check the merchandise or communicate with {its producer}."⁷⁸ Sunbeauty additionally pointed out that its self-described "negligence" with regard to preparing the invoice has downstream consequences regarding the shelf life of the honey and its ultimate sale.⁷⁹ Therefore, as explained in the Preliminary *Bona Fides* Memo, Sunbeauty's self-described "negligence when preparing" the invoices it later submitted to the Department raises concerns about Sunbeauty's submissions as a whole and also the *bona fides* of Sunbeauty's sales, because this significant discrepancy means that the importer and, ultimately, the final U.S. customer made purchasing decisions with respect

⁷⁰ Sunbeauty's Case Brief at 15.

⁷¹ Final BPI Memo at Note 6.

⁷² Preliminary *Bona Fides* Memo at 15.

⁷³ *Id.*

⁷⁴ See Petitioners Rebuttal Brief at 20-21.

⁷⁵ See *New Donghua*, 374 F. Supp 2d at 1342 ("{T}he *bona fides* analysis encompasses factors beyond price to assess whether the sales(s) under review are indicative of future commercial behavior.").

⁷⁶ See generally the Final BPI Memo at Note 6 for a further discussion on the Deficiencies and Discrepancies in Sunbeauty's Questionnaire Responses.

⁷⁷ See Sunbeauty's Case Brief at 16.

⁷⁸ See Letter to the Secretary from Sunbeauty, entitled, "Honey from the People's Republic of China: Responses to Supplemental Section D Questionnaire," dated September 1, 2016 at 2.

⁷⁹ *Id.* at 2-3.

to the sale of Sunbeauty's honey without complete and accurate information.⁸⁰

In sum, for our final rescission, we have not made any changes to our methodology for conducting our price and quantity comparisons as part of our *bona fides* analysis from the *Preliminary Rescission*. Additionally, the Department has not found that any of Sunbeauty's arguments support the contention that the additional factors we considered, including the expenses associated with the sales, are not indicative of non-*bona fide* sales.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If accepted, we will publish the final rescission of this NSR in the *Federal Register*.

Agree

Disagree

3/24/2017

X



Signed by: GARY TAVERMAN

Gary Taverman
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

⁸⁰ Preliminary *Bona Fides* Memo at 16 (citing Letter to the Secretary from Shanghai Sunbeauty, entitled, "Honey from the People's Republic of China: Responses to Supplemental Section D Questionnaire," dated September 1, 2016 at 2).