



A-570-863
Administrative Review
POR: 12/1/2017 – 11/30/2018
Public Document
E&C/OV: JM

July 21, 2020

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty
Administrative Review of Honey from the People's Republic of
China; 2017-2018

I. SUMMARY

The Department of Commerce (Commerce) has analyzed the case and rebuttal briefs submitted by interested parties and, consistent with the *Preliminary Results*, continue to find it appropriate to rescind this review because the single U.S. sale reported by the mandatory respondent in this case, Jiangsu Runchen Agricultural/Sideline Foodstuff Co., Ltd. (Runchen), was not *bona fide*.¹ We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of issues in this review for which we received comments from interested parties:

- Comment 1: Whether a *Bona Fides* Analysis is Applicable in Administrative Reviews
- Comment 2: Appropriateness of Using U.S. Customs and Border Protection (CBP) Data
- Comment 3: Whether Sale Price and Quantity Weigh in Favor of Finding Runchen's Sale Not *Bona Fide*
- Comment 4: Whether the Goods Were Resold at a Profit
- Comment 5: Other Relevant Factors

¹ See *Honey from the People's Republic of China: Preliminary Results and Preliminary Intent to Rescind of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 66374 (December 4, 2019) (*Preliminary Results*).

II. BACKGROUND

On December 4, 2019, Commerce published the *Preliminary Results* of this review and invited interested parties to comment.² On January 3, 2020, Runchen filed its case brief.³ On January 9, 2020, Runchen re-filed its case brief after Commerce rejected its initial case brief for containing new factual information.⁴ On January 15, 2020, we received a rebuttal brief from the American Honey Producers Association and Sioux Honey Association (collectively, the petitioner).⁵

III. SCOPE OF THE ORDER

The merchandise subject to this order is 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, 2106.90.99, 0409.00.0010, 0409.00.0035, 0409.00.0005, 0409.00.0045, 0409.00.0056, and 0409.00.0065 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, {Commerce}'s written description of the merchandise under the order is dispositive. Also, included in the scope are blends of honey and rice syrup, regardless of the percentage of honey contained in the blend.

IV. DISCUSSION OF THE ISSUES

Comment 1: Whether a *Bona Fides* Analysis Is Applicable in Administrative Reviews

*Runchen's Comments*⁶

- Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act), clearly states that a *bona fide* sales analysis is applicable only to new shipper reviews (NSRs). Thus, Commerce's application of the *bona fides* analysis in this administrative review (AR) is contrary to law. If Commerce still decides to conduct a *bona fides* analysis, Runchen's period of review (POR) sale still passes every criterion and should be found *bona fide* such that Commerce should not rescind the review.

² *Id.*, 84 FR at 66375.

³ See Runchen's Letter, "Honey from the PRC – Administrative Case Brief of Jiangsu Runchen Agricultural/Sideline Foodstuff Co., Ltd.," dated January 3, 2020.

⁴ See Runchen's Letter, "Honey from the PRC – Administrative Case Brief of Jiangsu Runchen Agricultural/Sideline Foodstuff Co., Ltd.," dated January 9, 2020 (Runchen's Case Brief); see also Memorandum, "Administrative Review of the Antidumping Duty Order on Honey from the People's Republic of China: Rejection of Case Brief," dated January 8, 2020.

⁵ See Petitioner's Letter, "Honey from China: Petitioners' Rebuttal Brief," dated January 15, 2020 (Petitioner's Rebuttal Brief).

⁶ See Runchen's Case Brief at 1.

- The standard for what constitutes a non-*bona fide* sale is stringent.⁷ To meet this standard, Commerce must articulate precisely how specific facts on the record support each of its specific conclusions, or otherwise find Runchen’s sale to be *bona fide*.

*Petitioner’s Rebuttal Comments*⁸

- Commerce correctly applied its *bona fide* sales analysis to Runchen’s POR sale and its conclusion is in accordance with law. The Act makes clear that any weighted-average dumping margin shall be based solely on the *bona fide* U.S. sales of an exporter or producer.⁹ Thus, a sale must be *bona fide* in order for Commerce to calculate a company-specific cash deposit rate.
- Runchen is incorrect that the standard for a *bona fide* sales analysis is stringent. Commerce’s analysis is a consideration of statutory factors based on the “totality of the circumstances” (*i.e.*, “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.”).¹⁰ Commerce’s review of the “totality of the circumstances” was affirmed by the Court of International Trade (CIT).¹¹
- The Act directs Commerce to consider “any other factor the administering authority 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.”¹² Thus, the plain language of the Act undermines Runchen’s claim that the standard for applying a *bona fide* sales analysis is “stringent.”

Commerce’s Position: We disagree with Runchen that *bona fides* analyses are only applicable in NSRs. As we explained in the *Preliminary Results*, Commerce has a well-established practice of conducting *bona fide* sales analysis in ARs, where warranted.¹³ Further, the CIT has held that Commerce has the authority to conduct *bona fides* analyses in the context of ARs.¹⁴

⁷ *Id.* at 2 (citing *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1344 (CIT 2005) (*New Donghua*)).

⁸ See Petitioner’s Rebuttal Brief at 4-6.

⁹ *Id.* at 5 (citing section 751(a)(2)(B)(iv) of the Act).

¹⁰ *Id.* (citing *Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246, 1250 (CIT 2005) (*Tianjin Tiancheng*)).

¹¹ *Id.* (citing *Windmill Int’l Pte., Ltd. v. United States*, 193 F. Supp. 2d 1303, 1313 (CIT 2002) (*Windmill*)).

¹² *Id.* at 6 (citing section 751(a)(2)(B)(iv)(VII) of the Act).

¹³ See *Glycine from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Intent to Rescind, in Part; 2013-2014*, 80 FR 18814 (April 8, 2015), and accompanying Preliminary Decision Memorandum (PDM) at 1 and 3-5, unchanged in *Glycine from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 62027 (October 15, 2015), and accompanying Issues and Decision Memorandum (IDM) at Comment 5; see also *Certain Pasta from Turkey: Preliminary Results of Antidumping Duty Administrative Review*, 82 FR 36737 (August 7, 2017), and accompanying PDM at 1-3, unchanged in *Certain Pasta from Turkey: Final Results and Rescission of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 6516 (February 14, 2018), and accompanying IDM at Comment 1.

¹⁴ See, e.g., *Evonik Rexim (Nanning) Pharm. Co. v. United States*, 253 F. Supp. 3d 1364, 1370-71 (CIT 2017) (*Evonik Rexim*) (sustaining Commerce’s application of the totality of the circumstances test and partial rescission of an administrative review); and *Windmill*, 193 F. Supp. 2d at 1312-1313.

In 2015, Congress amended the Act to add section 751(a)(2)(B)(iv). This section requires Commerce to base the dumping margins in an NSR on *bona fide* U.S. sale(s). Although there is no analogous statutory provision requiring that Commerce conduct *bona fides* analyses outside of NSRs, Commerce has conducted such analyses in ARs as a matter of long-standing practice.¹⁵ Further, Commerce's *bona fides* practice is consistent in both ARs and NSRs, and in each type of review Commerce is making the same fair comparison of normal value with a U.S. sale price pursuant to section 773(a) of the Act. There is no reasonable explanation why a *bona fides* analysis would be relevant only in an NSR and not in an AR when no such distinction is provided for in the Act. Therefore, contrary to Runchen's argument that it is improper to treat it as a "new shipper," we find that Congress's silence regarding an analysis of the *bona fides* of U.S. sales in an AR does not suggest that Commerce is prohibited from examining this issue in such an AR. Rather, it simply suggests that Commerce is not required to conduct a *bona fides* analysis in every AR, like it is in each NSR. This follows Commerce practice.¹⁶

We further find that the factors listed in section 751(a)(2)(B)(iv) of the Act can be used for guidance in conducting a *bona fides* analysis in an AR, even though they are not strictly applicable in an AR. In evaluating whether a sale is *bona fide*, Commerce employs a "totality of the circumstances" test.¹⁷ In examining the totality of the circumstances, Commerce looks to whether the transaction is "commercially reasonable" or "atypical."¹⁸ Atypical or non-typical in this context means unrepresentative of a normal business practice.¹⁹ Specifically, in evaluating whether a sale is *bona fide*, Commerce has also looked to section 751(a)(2)(B)(iv) of the Act as guidance for conducting a *bona fides* analysis in administrative reviews.²⁰ Commerce considers: (a) the price of the sale; (b) whether the sale was made in commercial quantities; (c) the timing of the sale; (d) the expenses arising from the transaction; (e) whether the goods were resold in the United States at a profit; (f) whether the transaction was made on an arm's-length basis; and (g) any other factor that Commerce considers to be relevant as to whether the sale at issue is

¹⁵ See, e.g., *Titanium Sponge from the Russian Federation; Notice of Final Results of Antidumping Duty Administrative Review*, 62 FR 48601, 48604 (September 16, 1997) (*Titanium Sponge*); *Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results And Rescission, In Part, of 2004/2005 Antidumping Duty Administrative and New Shipper Reviews*, 72 FR 19174 (April 17, 2007), and accompanying IDM; and *Certain Frozen Warmwater Shrimp from the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews*, 72 FR 52049 (September 12, 2007), and accompanying IDM.

¹⁶ See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results and Partial Rescission of Review; 2017-2018*, 85 FR 9459 (February 19, 2020) (*TRBs*), and accompanying IDM.

¹⁷ See *Tianjin Tiancheng*, 366 F. Supp. 2d 1246, 1249-1250; see also *Glycine from the People's Republic of China: Rescission of Antidumping Duty New Shipper Review of Hebei New Donghua Amino Acid Co., Ltd.*, 69 FR 47405, 47406 (August 5, 2004).

¹⁸ See, e.g., *Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty New Shipper Review and Final Rescission of Antidumping Duty New Shipper Review*, 68 FR 1439, 1440 (January 10, 2003), and accompanying IDM at Comment 1.

¹⁹ See *American Silicon Technologies v. United States*, 110 F. Supp. 2d 992, 996-98 (CIT 2000) (*Silicon Techs*).

²⁰ See *Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation: Final Results and Rescission of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 38948 (August 8, 2019) (*Hot-Rolled Russia*), and accompanying IDM at Comment 1.

“likely to be typical of those the exporter or producer will make after the completion of the review.”²¹

The CIT recognized that the aim of Commerce’s *bona fide* sales analysis is “to ensure that a producer does not unfairly benefit from an atypical sale to obtain a lower dumping margin than the producer’s usual commercial practice would dictate.”²² In *Tianjin Tiancheng*, the CIT affirmed Commerce’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,” and the CIT found that “the weight given to each factor investigated will depend on the circumstances surrounding the sale.”²³ Further, where an AR is based upon a single sale, it is well-established that Commerce carefully scrutinizes single sales because there is only one transaction with which to calculate an antidumping duty (AD) margin and establish a cash deposit rate.²⁴ In sum, Commerce has a long-standing practice of conducting *bona fides* analyses for a single sale in ARs, and the Courts have repeatedly upheld Commerce’s authority to make such determinations. Accordingly, we find that it is within our authority to examine whether Runchen’s single sale in this AR was *bona fide*.

We disagree that Runchen’s reliance on *New Donghua* is on point. In *New Donghua*, the CIT noted that Commerce’s practice makes clear Commerce is

highly likely to examine objective, verifiable factors to ensure that a sale is not being made to circumvent an AD Order. Thus, a prospective new shipper is on notice that it is unlikely to establish the *bona fides* of a sale merely by claiming to have sold in a manner representative of its future commercial practices.²⁵

In other words, if there is a strict standard, the burden is on the respondent to provide the necessary information for Commerce to determine that a sale is *bona fide*.

Lastly, it is also well-established that, when no *bona-fide* sales were made during the POR, there is no basis to calculate an accurate dumping margin, and it is within Commerce’s authority to rescind the review.²⁶ As a result, a finding that the sale at issue is non-*bona fide* must necessarily end a single sale review.²⁷ Because Commerce finds no *bona fide* sale to review during the POR, consistent with our practice, we are rescinding this review.

²¹ See, e.g., *Tianjin Tiancheng*, 366 F. Supp. 2d at 1250 (citing *Silicon Techs*, 110 F. Supp. 2d at 992, 995); see also *New Donghua*, 374 F. Supp. 2d at 1333, 1342.

²² See *Inner Mongolia Jianlong Biochemical Co. v. United States*, 337 F. Supp. 3d 1329, 1338 (CIT 2018) (citing *Huzhou Muyun Wood Co., Ltd. v. United States*, 324 F. Supp. 3d 1364, 1376 (CIT 2018)).

²³ See *Tianjin Tiancheng*, 366 F. Supp. 2d at 1250, 1263.

²⁴ See, e.g., *Silicomanganese from India: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 75660 (December 3, 2015), and accompanying IDM at Comment 1; see also *Tianjin Tiancheng*, 366 F. Supp. 2d at 1249; and *New Donghua*, 374 F. Supp. 2d at 1344.

²⁵ See *New Donghua*, 374 F. Supp. 2d at 1339.

²⁶ See, e.g., *Evonik Rexim*, 253 F. Supp. 3d at 1364, 1370; see also *Titanium Sponge*, 62 FR at 48604.

²⁷ See *Tianjin Tiancheng*, 366 F. Supp. 2d at 1249.

Comment 2: Appropriateness of Using CBP Data

In conducting a *bona fides* analysis, Commerce determines whether reported sales transactions are “commercially unreasonable” or “atypical of normal business practices.” To make this determination, Commerce looks to section 751(a)(2)(B)(iv) of the Act as guidance. Commerce considers seven factors in its analysis, including whether the prices were typical for the industry in question and whether the sales at issue were made in commercial quantities.²⁸

With respect to the price and quantity factors, Runchen provided retail prices in the United States, and it claimed that these data demonstrated that the price and quantity of its reported U.S. sale were reasonable and competitive. However, following Commerce’s long-standing practice, we compared the price and quantity of honey imports shown in CBP data to the price and quantity of Runchen’s POR sale to determine whether the sale was *bona fide*.

*Runchen’s Comments*²⁹

- Commerce improperly disregarded the substantial price and quantity data submitted by Runchen. Commerce should use these data for its price and quantity comparisons because they show that the price and quantity of Runchen’s U.S. sale are consistent with the price and quantity information for honey sold in the United States during the POR.
- Commerce inappropriately relied on data from an HTSUS category covering a wide range of honey products which are different than the product in Runchen’s POR sale. Thus, this comparison is not product-specific.
- The average unit values (AUVs) of the entries in each of the HTSUS subheadings within the CBP data indicate that entries may be misclassified. This calls into question the reliability of the CBP data (*see* Comment 3 for further discussion).

*Petitioner’s Rebuttal Comments*³⁰

- Commerce has rejected similar arguments regarding product specificity and CBP data. For example, in *Globe Metallurgical*, Commerce relied on an AUV derived from a basket Harmonized Tariff Schedule (HTS) category of Indian import data. The CIT sustained Commerce’s position despite plaintiff’s complaints that the AUV was not sufficiently product-specific.³¹
- There is no HTSUS subheading that covers products with the exact characteristics of Runchen’s honey sold during the POR, and Commerce relied on the best proxy on the record for a comparison. Thus, Runchen’s claims regarding specificity are without merit.
- Runchen argued that Commerce should consider the price data it submitted but failed to discuss in its case brief what the information consists of or what it demonstrates.

²⁸ The other factors listed in section 751(a)(2)(B)(iv) of the Act include: (1) the timing of the sale; (2) the expenses arising from the transaction; (3) whether the subject merchandise was resold in the United States at a profit; (4) whether the sales were made on an arms-length basis; and (5) any other relevant factors. Commerce examines the totality of the circumstances to determine whether the transaction is “commercially unreasonable” or “atypical of normal business practices.”

²⁹ *See* Runchen’s Case Brief at 5-6.

³⁰ *See* Petitioner’s Rebuttal Brief at 7-9.

³¹ *Id.* at 7-8 (citing *Globe Metallurgical, Inc. v. United States*, 33 CIT 435-36, 438 (2009) (*Globe Metallurgical*)).

Commerce's regulations are clear that a party's case brief must present all arguments that continue to be relevant, including any arguments presented before the *Preliminary Results*.³² Additionally, in the *Preliminary Results*, Commerce explained why it was not relying on the sources Runchen provided,³³ and Runchen failed to either respond to Commerce's explanation or make any legal or factual arguments as to why Commerce should change its decision.

- There is no evidence on the record to support Runchen's claim that the reliability of the CBP data is questionable. Additionally, comparing the prices of honey imported under different HTSUS subheadings is not an indication that the data are unreliable. Honey with different specifications are imported under different subheadings and have different prices. Runchen simply notes these differences without explaining how they indicate problems with the data. Commerce should reject Runchen's speculations regarding the reliability of the CBP data.

Commerce's Position: For purposes of these final results, we continue to rely on CBP data for our analysis. As an initial matter, and as noted in the BF Memo, our typical practice when conducting a *bona fides* analysis is to evaluate the reported U.S. price and quantity using data from CBP.³⁴ As is further clarified in *OCTG from Turkey*,

Commerce relies on the POR data for entries made under the HTSUS categories, covered by the scope of the order, under which the shipment of the U.S. sale under examination was entered, as obtained from {CBP}.³⁵

In the instant review, we followed our long standing practice and used imports of Chinese honey made under the same HTSUS subheading under which Runchen's honey was entered (which is covered by the scope of the order) in our price and quantity analysis.³⁶

As the petitioner notes, our finding is also in accordance with the CIT's decision in *Globe Metallurgical*. In *Global Metallurgical*, the CIT remanded Commerce's decision to use a basket HTS subheading for silicon dioxide to value silica fume because it did not have a specific subheading. On remand, Commerce continued to use the basket HTS subheading and excluded countries that were not producers of silicon dioxide or were non-market economy countries. The CIT found that this narrower subset of HTS data was the "best available information" and supported by substantial evidence.³⁷ In the instant review, we used a more specific HTSUS subheading than a basket HTSUS subheading. Additionally, for this specific HTSUS subheading we only included entries of products where China was the country of origin. Thus, the HTSUS subheading used in our comparison yields a narrow subset of the HTSUS data, and these data are the best information available on the record of this AR, as discussed further below.

³² *Id.* at 8 (citing 19 CFR 351.309(c)(2)).

³³ *Id.* (citing Memorandum, "Preliminary *Bona Fide* Sales Analysis," dated November 29, 2019 (BF Memo) at 4).

³⁴ See BF Memo at 4-5 (citing *Certain Oil Country Tubular Goods from Turkey: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 64107 (December 13, 2018) (*OCTG from Turkey*), and accompanying IDM at 13; and *Hot-Rolled Russia* IDM at Comment 2).

³⁵ See *OCTG from Turkey* IDM at 13.

³⁶ See BF Memo at 4-5 (citing *OCTG from Turkey* IDM at 13 and *Hot-Rolled Russia* IDM at Comment 2).

³⁷ See *Globe Metallurgical*, 33 CIT at 436.

Significantly, Runchen failed to cite to any evidence on the record that would indicate that the CBP data are unreliable. Instead, Runchen merely claims that the CBP data are questionable, given that the range of the AUVs reflected in them suggests potential misclassification of entries (*i.e.*, importers may be declaring entries of honey packaged for retail sale under an HTSUS category 0409.00.00.65, a category Runchen claims is for bulk honey, instead of under HTSUS category 0409.00.00.10, the category covering such merchandise).^{38,39} However, Runchen’s claim of misclassification is speculation, and Runchen cites to nothing on the record to support it. In analogous situations, such as those regarding whether a surrogate value (SV) is aberrational in a non-market economy proceeding, Commerce has found that the existence of high or low values alone does not necessarily indicate that import data are distorted or misrepresentative; thus, Commerce has determined that the size of these values provides an insufficient basis upon which to exclude a particular data point.⁴⁰ Rather, it is our practice to require interested parties to provide specific evidence demonstrating that the value is aberrational. In this proceeding, Runchen provided no such evidence to support its claims that the HTSUS entries are misclassified, and absent any such information on misclassification or aberrations, Commerce cannot substantiate Runchen’s claim that there is misclassification. As such, for these final results, Commerce has continued to use the CBP data for price and quantity comparison purposes.

Finally, we disagree that we improperly disregarded the price and quantity data that Runchen submitted. As we noted in the BF Memo, Runchen’s information “contains flaws and are not the best information available on the record to perform our {*bona fide* sales} analysis.”⁴¹ Specifically, we stated that the products in Runchen’s data “do not match the product imported {and} provide no information for Commerce to confirm that the products match...and less than a quarter of the price examples provided listed the country of origin for the honey”⁴² In its case brief, Runchen did not address any of Commerce’s concerns over these data, nor did Runchen provide any explanation for why its data constitute the best available information on the record in light of these concerns. Instead, Runchen argued that use of the CBP data were inappropriate for various reasons. However, as stated above, the CBP data do not suffer from the same defects as Runchen’s pricing data, given that we are using a narrow subset of HTSUS data in the identical HTSUS category under which Runchen’s POR sale entered. As a result, we are confident that the products compared in our analysis match the honey that Runchen sold,

³⁸ See Runchen’s Case Brief at 5. We note that the HTSUS indicates that this category is for “Amber or darker” honey, with no limitation that the imported products are of bulk honey, *see* U.S. International Trade Commission’s *Harmonized Tariff Schedule of the United States (2020) Revision 13 – Chapter 4*.

³⁹ Significantly, Commerce’s price comparison analysis does not include imports under HTSUS category 0409.00.00.65. Thus, any potential misclassification in this particular HTSUS category would be irrelevant to our analysis here.

⁴⁰ See, *e.g.*, *Steel Wire Garment Hangers from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 2012-2013*, 80 FR 13332 (March 13, 2015) (*Hangers*), and accompanying IDM at Comment 5; *see also Steel Propane Cylinders from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 84 FR 29161 (June 21, 2019), and accompanying IDM at Comment 3; and *1-Hydroxyethylidene-1, 1-Diphosphonic Acid From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2016–2018*, 84 FR 67925 (December 12, 2019), and accompanying IDM at Comment 8.

⁴¹ See BF Memo at 4.

⁴² *Id.*

whereas we are uncertain that this is true for Runchen's data. Further, unlike for the products in Runchen's data, we know the country of origin is China for the CBP data. Thus, we continue to find the CBP data are the best available information on the record of this AR with which to evaluate the price and quantity of Runchen's sale.⁴³ This decision is in line with our long-standing practice to use CBP data for the price and quantity factors in our *bona fides* analysis.⁴⁴

Comment 3: Whether Sale Price and Quantity Weigh in Favor of Finding Runchen's Sale Not *Bona Fide*

As noted above, we compared the price and quantity of Runchen's POR sale to the AUVs and quantities shown in CBP import data for all entries under the same HTSUS subheading. Based on this comparison, we concluded that Runchen's sales price and quantity weighed in favor of finding the sale non-*bona fide*.

*Runchen's Comments*⁴⁵

- The gross unit price of Runchen's POR sale and the AUVs for the other entries under the same HTSUS subheading under which Runchen's product entered during the POR did not differ significantly. Given that the relevant HTSUS category is not product-specific, any slight price difference could be explained by differences in color, grade, floral source, and packing size among the products. For this reason, Commerce's price comparison is not meaningful.
- Commerce failed to explain how the results of its price comparison indicate that Runchen's sale is not based on normal commercial considerations. This is contrary to law.⁴⁶
- Runchen's POR sale was for high quality honey packaged for retail sale, while the CBP data were for inferior honey. Given the wide variation of honey products covered under this HTSUS subheading, and the inclusion of bulk honey in the CBP data, Runchen's price cannot be considered aberrational solely by reference to these data.⁴⁷
- In light of the dissimilarities in product mix and quality, the observed price differences are not meaningful.
- Runchen submitted price data that indicates that Runchen's sale was commercially reasonable given the market conditions at the time.⁴⁸

⁴³ See Runchen's Case Brief at 5.

⁴⁴ See BF Memo at 4-5 (citing *OCTG from Turkey* IDM at 13 and *Hot-Rolled Russia* IDM at Comment 2).

⁴⁵ See Runchen's Case Brief at 6-9.

⁴⁶ *Id.* at 6 (citing *Queen's Flowers de Colombia v. United States*, 987 F. Supp. 617, 627 (CIT 1997); *Hontex Enterprises, Inc. v. United States*, No. 02-00223, Slip Op. 03-17 at 41 (CIT 2003) (*Hontex*); *Thomas Jefferson University v. Shalala*, 512 U.S. 504, 525 (1994) (*Thomas Jefferson*); and *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498 (1982) (*Hoffman*)).

⁴⁷ See Runchen's Case Brief at 8 (citing Petitioner's Letter, "Administrative Review of Honey from the People's Republic of China – New Factual Information in Rebuttal to Jiangsu Runchen's Sections C and D Questionnaire Response," dated May 24, 2019 at Attachment 3).

⁴⁸ *Id.* at 7 (citing Runchen's Letter, "Honey from the PRC – Rebuttal Comments on Petitioner's Pre-Prelim Comments," dated October 17, 2019 at 7-8).

- Given Commerce’s long history with the AD order on honey from China, Commerce knows that the quantity of Runchen’s sale is perfectly normal. Thus, Commerce’s conclusion that Runchen’s sale quantity is not typical is not supported by fact.
- Commerce’s explanation that Runchen’s sale should have a lower AUV because the quantity of Runchen’s honey (compared to the quantity of the other entries in the CBP data) permits economies of scale is based on flawed logic and is contrary to law.

*Petitioner’s Rebuttal Comments*⁴⁹

- Runchen cited numerous cases to demonstrate that Commerce’s decision was contrary to law. Runchen, however, failed to explain how these cases apply to this AR. In particular, all the cases cited pre-date the 2015 modification to the NSR provision, and Runchen failed to explain how these cases apply now that Commerce’s *bona fide* sales analysis is codified in law. Thus, Commerce’s decision in the *Preliminary Results* is not contrary to law.
- Commerce correctly concluded that Runchen’s price, when compared to the AUV for other entries in the CBP data, supports a finding that Runchen’s sale was not *bona fide* in accordance with section 751(a)(2)(B)(iv)(I) of the Act.
- Commerce is not required to compare values for a product that is identical to the respondent’s product. Thus, the comparison of Runchen’s price for honey price to the AUV for other kinds of honey is not unfair or improper.
- The price factor in Commerce’s *bona fide* sale analysis is not dispositive. As Commerce concluded in the *Preliminary Results*, numerous other factors and record evidence also demonstrated that Runchen’s sale was not *bona fide*. Additionally, even in cases where Commerce found that the price factor indicated the sale could be *bona fide*, it also found the sale to be non-*bona fide* where other circumstances surrounding the sale were atypical.⁵⁰
- While Runchen claimed that Commerce’s conclusion regarding Runchen’s sales quantity was flawed, it failed to cite or discuss any record evidence to support its argument. Thus, Commerce should continue to find that Runchen’s sales quantity, as compared to the quantities of the other entries of Chinese honey made during the POR, is atypical.
- Commerce’s analysis of the “other relevant factors” is also applicable for the quantity factor. In the analysis of “importer/exporter experience,” Commerce correctly concluded that Runchen’s POR sale is atypical compared to its overall production of honey and the type of honey Runchen usually sells.⁵¹ This conclusion holds true for the quantity factor as well.

Commerce Position: We continue to find that the price and quantity of Runchen’s sale, when taken together with other factors, weigh in favor of finding the sale non-*bona fide*. As an initial matter, Runchen cites to numerous cases to demonstrate that Commerce’s decision regarding the

⁴⁹ See Petitioner’s Rebuttal Brief at 9-12.

⁵⁰ *Id.* at 10 (citing *Jinxiang Huameng Imp & Exp Co., Ltd. v. United States*, 374 F. Supp. 3d 1365, 1368 (CIT 2019)).

⁵¹ Runchen has claimed that the type of honey used for each honey product is business proprietary information (BPI). For the specific types of honey used in each product, see BF Memo at 10.

price of Runchen's POR sale was contrary to law.⁵² However, Runchen failed to explain how the cases it cited support its argument. Further, a review of the cited court cases suggests that they are irrelevant to this AR and/or have been incorrectly characterized in Runchen's case brief.⁵³

While these court cases do not directly support Runchen's argument, Runchen ultimately argues that Commerce's decision regarding the price of Runchen's POR sale was contrary to law. As noted above, Commerce looks to section 751(a)(2)(B)(iv) of the Act as guidance for conducting a *bona fides* analysis. Price and quantity are two of those factors Commerce considers in its analysis.⁵⁴ In evaluating whether a sale is *bona fide*, Commerce employs a "totality of circumstances" test.⁵⁵ Thus, no single factor is dispositive in our determination; rather, we consider each factor in light of all of the facts and circumstances surrounding the sale. Further, as the petitioner noted, even if one factor does not weigh against a finding that the sale is *bona fide*, including price, Commerce may still determine that the sale is non-*bona fide* based on the other factors.⁵⁶

In the *Preliminary Results*, we compared the price and quantity of Runchen's POR sale to the AUV and quantity for all other POR entries in the CBP data that were classified under the same HTSUS subheading as Runchen's sale.⁵⁷ As we noted in the *Preliminary Results*, Runchen's AUV was not significantly different from the AUV of the other POR entries,⁵⁸ however, it was on the higher end of the range. Moreover, as we further explained, this price difference, when considered in conjunction with the other factors including the sales quantity (*i.e.*, in totality), called into question the ability of Runchen to make future sales at a similar price in the United States and weighed in favor of finding the sale non-*bona fide*.⁵⁹ In other words, when we compared Runchen's AUV and the sales quantity together against the other entries in the CBP data, we found that Runchen's AUV and sales quantity are atypical and thus, they "{call} into question whether this sale was based on normal commercial considerations."⁶⁰

Runchen argues that the AUV for its sale does not differ significantly from the AUV of the other entries in the CBP data, and, thus, any price difference is not meaningful. However, Commerce looks to section 751(a)(2)(B)(iv) of the Act as guidance for conducting a *bona fides* analysis and we make our determination based on the totality of circumstances, so it is essential that we examine each factor in our analysis. For example, in *Dongtai Peak NSR*, we found that the

⁵² See Runchen's Case Brief at 6.

⁵³ See, e.g., *Queen's Flowers*, 987 F. Supp. at 617, 627 and *Hontex*, Slip Op. 03-17 at 41, which relate to the issue of collapsing and do not appear to have any bearing on this proceeding. Runchen also cites to *Thomas Jefferson*, 512 U.S. at 504, 525 and *Hoffman*, 455 U.S. 489, 498 which also do not appear relevant to this discussion. Runchen provided no explanation how these court cases are applicable to this instant review.

⁵⁴ See section 751(a)(2)(B)(iv)(I-II) of the Act.

⁵⁵ See, e.g., *TRBs IDM* at Comment 2.

⁵⁶ See, e.g., *Honey from the People's Republic of China: Final Rescission of Antidumping Duty Administrative Review*, 77 FR 34343 (June 11, 2012) (*Dongtai Peak NSR*), and accompanying *IDM* at Comment 1.

⁵⁷ See BF Memo at 5-6. We note that the price of Runchen's sale in the sales database, and the AUV of the associated entry, are the same.

⁵⁸ *Id.* at 6

⁵⁹ *Id.*

⁶⁰ *Id.*

evidence pertaining to the respondent's sales price was inconclusive and that the evidence related to the sale quantity did not weigh against a finding that the sale at issue was *bona fide*. Nonetheless, based on the totality of evidence, Commerce found the respondent's sale non-*bona fide*.⁶¹ Thus, any finding under this factor is relevant to Commerce's analysis.

Runchen also argues that Commerce failed to explain its conclusion that Runchen's AUV is not reflective of normal commercial considerations, and it claims that Commerce's "economies of scale" rationale is flawed. We also disagree. As we stated in the BF Memo, "we find that it is commercially reasonable that a higher quantity would result in a lower AUV because of the benefits from economies of scale (*i.e.*, companies receive a saving in costs gained by increased levels of production)."⁶² In other words, we find that it is reasonable to consider price and quantity together when performing our analysis, given the relationship between these factors.

We similarly find no merit to Runchen's argument that the price difference could be explained by packaging (*i.e.*, retail versus bulk) and quality differences. As noted above, the CBP data are the best data available on the record and yield the most specific comparison to Runchen's sale. Additionally, we find that there is nothing on the record that supports Runchen's claim that the CBP data indicate that there are wide variations in packaging or that we compared Runchen's retail honey against bulk honey. Finally, there is nothing on the record that indicates the quality of the honey in the other entries or that these entries were for honey blends. Thus, the record does not support Runchen's explanation that quality is the reason for the price differences.

Regarding Runchen's claim that its sales quantity was not aberrational based on historical sales quantities,⁶³ we disagree that this argument has merit. As an initial matter, in a *bona fide* sales analysis, Commerce does not typically review the POR sale against sales made during a prior POR. Commerce only uses prior POR data for price and quantity comparisons when the data sources for the current POR are limited.⁶⁴ Not only do we have usable POR data here, but also a review of the record evidence indicates that the prior POR sale relied upon by Runchen may itself not have been *bona fide*. Specifically, Runchen cited to one of the petitioner's submissions, but a review of this submission shows only Runchen's POR sale and one prior-POR sale also made by Runchen within the context of an NSR.⁶⁵ In that NSR, Commerce rescinded the review because the record lacked critical information necessary to determine whether Runchen's sale was made in a *bona fide* manner.⁶⁶ Thus, it would be inappropriate to compare Runchen's POR sale to a prior sale which itself was potentially not *bona fide*. In any event, as we explained above, we continue to find that the CBP data are the best information

⁶¹ See *Dongtai Peak NSR* IDM at 5.

⁶² See BF Memo at 6. Commerce has used this line of thinking in prior *bona fide* sales analysis *see e.g.*, *TRBs* IDM at Comment 2.

⁶³ See Runchen's Case Brief at 8 (citing Petitioner's Letter, "Administrative Review of Honey from the People's Republic of China – New Factual Information in Rebuttal to Jiangsu Runchen's Sections C and D Questionnaire Response," dated May 24, 2019 (Historical Data) at Attachment 3).

⁶⁴ See *e.g.*, *OCTG from Turkey* IDM at 13-14.

⁶⁵ See Historical Data at Attachment 3.

⁶⁶ See *Honey from the People's Republic of China: Preliminary Rescission of the New Shipper Review and Preliminary Results of the Administrative Review; 2015-2016*, 82 FR 31557 (July 7, 2017), and accompanying PDM, unchanged in *Honey from the People's Republic of China: Final Rescission of the New Shipper Review and Final Results of the Administrative Review; 2015-2016*, 83 FR 1015 (January 9, 2018), and accompanying IDM.

available on the record for this POR, and Runchen made no argument as to why its prior POR sale, or other historical data not specified, would constitute better information.

In sum, the weight of the evidence does not demonstrate that the POR sales price or quantity is a typical sale price or quantity when considered in totality, nor does it indicate that this sale price and quantity is representative of Runchen's future commercial selling practices. Thus, we continue to find that Runchen's sale price and quantity for its POR sale when considered along with other atypical aspects of its sale, weighs in favor of finding the sale non-*bona fide*.

Comment 4: Whether the Goods Were Resold at a Profit

*Runchen's Comments*⁶⁷

- Commerce's conclusion that the goods were not resold at a profit is based on conjecture and is, thus, contrary to law. Commerce should have requested all necessary information through additional supplemental questionnaires instead of basing its conclusion on speculation. Runchen should not be penalized for becoming aware, retrospectively, that it needed to provide further information.
- The information on the record does not support Commerce's presumption that a failure to report selling, general, and administrative expenses and other selling expenses, if they exist, would be great enough to wipe out Runchen's customer's profit. On the contrary, the record supports the claim that the goods were resold at a profit.
- Runchen's customer provided a description of its financial records system and demonstrated that all costs and expenses are supported by original documents (*i.e.*, the company's tax returns). Runchen's customer's financial system meets all applicable state and federal requirements.

*Petitioner's Rebuttal Comments*⁶⁸

- Runchen misunderstands the legal foundation of the *bona fides* analysis. Pursuant to the statutory language, a sale is not presumed to be *bona fide*; rather, there must be affirmative evidence to demonstrate that the sale is *bona fide*.⁶⁹ Thus, it was incumbent on Runchen to provide affirmative evidence in support of its request for a calculated, company-specific cash deposit rate.
- Commerce's conclusion that there is insufficient record evidence to demonstrate a profit on the sale was a correct assessment and should be maintained for the final results.
- While Runchen claimed that the record demonstrates the goods were resold at a profit, it failed to cite to any record evidence. On the contrary, the record supports Commerce's conclusion that Runchen's importer's operating costs may have been underreported and that the importer failed to report certain expenses.
- Commerce should clarify in the final results that it is relying on facts available with an adverse inference due to a lack of necessary information to conclude that the profitability factor weighs against finding Runchen's sale to be *bona fide*.

⁶⁷ See Runchen's Case Brief at 9-10.

⁶⁸ See Petitioner's Rebuttal Brief at 13-18.

⁶⁹ *Id.* at 13 (citing section 751(a)(2)(B)(iv) of the Act).

- Runchen’s argument that Commerce should have asked for further information ignores the fact that Commerce issued a supplemental questionnaire on this issue. Thus, Runchen had two opportunities to submit usable and complete information to demonstrate that Runchen’s customer made a profit on the resale. Pursuant to section 782(d) of the Act, Commerce is required to provide a party one additional opportunity to cure a deficiency in its response. Thus, Commerce fulfilled its statutory obligation.

Commerce Position: We continue to find that Runchen’s customer’s profit, if any, from the resale of the goods weighs in favor of finding the sale non-*bona fide*. As an initial matter, we disagree that Commerce failed to properly request all necessary information. As we explained above, and in the *Preliminary Results*:

Commerce’s practice makes clear that Commerce is highly likely to examine objective, verifiable factors to ensure that a sale is not being made to circumvent an AD order; therefore, a respondent is on notice that it is unlikely to establish the *bona fides* of a sale merely by claiming to have sold the merchandise in a manner representative of its future commercial practice.⁷⁰

In other words, it was incumbent on Runchen to provide the necessary information to prove that its sale was *bona fide*. Additionally, we note that the Courts have found that the burden of creating an adequate record lies with interested parties and not with Commerce.⁷¹ Thus, it was Runchen’s responsibility to place all information on the record upon which it is necessary for Commerce to base its decision and to provide objective, verifiable facts to establish the *bona fides* of its sale.

Runchen had two opportunities to place all necessary information on the record. Pursuant to section 782(d) of the Act, if we determine that a response is deficient, we shall provide the party an opportunity to remedy or explain the deficiency. If we find the additional response to be not satisfactory, we may disregard all or part of the original and subsequent responses. Because Runchen’s initial importer-specific questionnaire was deficient, we sent a supplemental importer-specific questionnaire asking additional questions about Runchen’s U.S. customer’s profit from the resale, thus providing Runchen a second opportunity to provide the necessary information and satisfying the requirements of section 782(d) of the Act.⁷²

In the *Preliminary Results*, we questioned whether the reported profit, which Runchen’s U.S. customer calculated by subtracting the cost of purchasing the honey and other direct transaction expenses from the sale revenue, would remain after considering overhead operating expenses.⁷³ While we did not request that the U.S. customer report its operating expenses, we found, based on record evidence, that the customer did incur such expenses. The record shows that the

⁷⁰ See BF Memo at 3 (citing *New Donghua*, 374 F. Supp. 2d at 1339-40).

⁷¹ See *QVD Food Co., Ltd. v. United States*, 658 F. 3d 1318, 1324-25 (Fed. Cir. 2011); see also *Fresh Garlic from the People’s Republic of China: Final Rescission of Antidumping Duty New Shipper Reviews; 2010-2011*, 78 FR 18316 (March 26, 2013), and accompanying IDM at 15.

⁷² See Commerce’s Letter, “Administrative Review of the Antidumping Duty Order on Honey from the People’s Republic of China: Importer-Specific Supplemental Questionnaire,” dated July 25, 2019.

⁷³ See BF Memo at 7-8.

importer had expenses typical of a business (*i.e.* rent, utilities, salaries, *etc.*).⁷⁴ It is therefore reasonable to presume, for example, that the importer incurred selling, general, and administrative expenses associated with the resale, which necessarily are not accounted for in the gross profit figure provided by Runchen.⁷⁵ Therefore, although the importer stated that it resold the merchandise at a profit, the record as developed by Runchen and its importer does not substantiate this claim.

Runchen argued that it submitted evidence demonstrating that its U.S. customer resold the honey for a profit. Runchen also countered that Commerce's conclusion was based on conjecture and speculation and that it was up to Commerce to request all necessary information.⁷⁶ We disagree. As discussed above, while Runchen's customer provided information regarding the profitability of the resale of the goods, that information was incomplete and ignored expenses that the customer would have incurred. Additionally, as stated above, it was incumbent on Runchen to provide the necessary information to prove that its sale was *bona fide* and, in accordance with section 782(d) of the Act, Commerce allowed Runchen its statutory right to cure its deficiencies in its response.

Therefore, although Commerce is unable to precisely ascertain the importer's net profit (or loss), the sales documents do not establish that the sale of subject merchandise was resold at a profit. When this fact is analyzed together with the totality of the circumstances of the sale, we find it calls into question whether Runchen's single sale is *bona fide*. This is in line with prior Commerce decisions surrounding similar circumstances.⁷⁷

Comment 5: Other Relevant Factors

a. Late Payment

In the *Preliminary Results*, we concluded that Runchen's customer paid significantly later than permitted under its original payment terms. Therefore, we found that consideration of this factor weighed in favor of finding the sale non-*bona fide*. For a more detailed discussion of this issue, see the BF Memo.

*Runchen's Comments*⁷⁸

- Commerce's conclusion that the lateness of the payment is atypical has no factual basis and is conjecture.

⁷⁴ See *e.g.*, Runchen's August 12, 2019 Supplemental Importer-Specific Questionnaire Response at 3, 6-7, Exhibit IMS-2; and Exhibit IMS-4.

⁷⁵ *Id.* (citing Runchen's August 12, 2019 Supplemental Importer-Specific Questionnaire Response at 3 at Exhibit IMS-2).

⁷⁶ See Runchen's Case Brief at 9-10.

⁷⁷ See *e.g.*, *Silicon Metal from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 69361 (December 18, 2019) (*Silicon Metal*), and accompanying IDM at Comment iv; and *TRBs* IDM at Comment 2. We note that, in these decisions, we found that the record contained evidence to support our conclusion. Therefore, consistent with these prior determinations, we have not relied on facts available with an adverse inference in this AR.

⁷⁸ See Runchen's Case Brief at 11-12.

- As Runchen previously explained, Runchen conducted the post-contract payment negotiations orally, and, each time both parties agreed to new payment terms, the new agreement was considered a legally valid amendment of the original contract. Post-contract negotiation is perfectly normal in this circumstance and legally valid.
- Runchen and its importer reported the process truthfully, accurately, and in detail with relevant dates, results, and supporting documents corroborating the chain of events.
- Commerce did not articulate a reason why a delayed payment might materially impact the accuracy, or any other relevant aspect, of the AD calculation.
- If Commerce suspects that the payment for Runchen’s POR sale is a sham, it should conduct verification of Runchen’s information.

*Petitioner’s Rebuttal Comments*⁷⁹

- There is nothing on the record to support Runchen’s explanation. On the contrary, record evidence demonstrates multiple oddities in the sales process that support Commerce’s decision in the *Preliminary Results*.
- Commerce clearly, and correctly, explained how the lateness of payment based on the original payment terms suggested that this sale was atypical in accordance with section 751(a)(2)(B)(iv)(VII) of the Act.
- Section 751(a)(2)(B)(iv)(VII) of the Act instructs Commerce to consider any other factors that it deems relevant as to whether such sales are likely to be typical of the exporter or producer after the review. Commerce’s inclusion of late payment falls under this category and is entirely permissible under the Act.
- Furthermore, the overall timing of this sale suggests that Runchen made it so that Runchen could participate in this AR, which is a strong indication that this sale was not *bona fide*. Commerce should cite these additional factual circumstances in the final results to support its conclusion that this sale is non *bona fide*.

Commerce Position: For these final results, we continue to find that there are the unique circumstances surrounding the payment which weigh in favor of finding the sale non-*bona fide*. Section 751(a)(2)(B)(iv)(VII) of the Act, which, again, we look to as guidance for our practice in conducting our *bona fides* analysis in this AR, instructs Commerce to consider any other factors it determines to be relevant as to whether the sale under review is “likely to be typical of those the exporter or producer will make after the completion of the review.”⁸⁰ In other words, Commerce is considering the payment for Runchen’s sale in the context of whether this sale is representative of Runchen’s future selling activity. In previous determinations, Commerce has

⁷⁹ See Petitioner’s Rebuttal Brief at 18-20.

⁸⁰ See section 751(a)(2)(B)(iv) of the Act (setting out the factors that Commerce considers to determine whether a sale is *bona fide* in the context of a new shipper review); see also *Tianjin Tiancheng*, 366 F. Supp. 2d at 1250 (citing *Silicon Techs*, 110 F. Supp. 2d at 992, 995); and *New Donghua*, 374 F. Supp. 2d at 1342 (“Commerce’s practice makes clear that it is highly likely to examine objective, verifiable factors to ensure that a sale is not being made to circumvent an antidumping duty order. Thus, a prospective new shipper is on notice that it is unlikely to establish the *bona fides* of a sale merely by claiming to have sold in a manner representative of its future commercial practices”).

analyzed payments from the customer when other characteristics of the sale indicate that the transaction was atypical and found this factor instructive in our analysis.⁸¹

Based on the information on the record, Runchen's customer paid significantly after the original sales terms, which is relevant in considering the totality of the circumstances surrounding the sale at issue.⁸² While Runchen claims that there were multiple verbal renegotiations, there is no supporting evidence for this claim, nor is it evident that Runchen's normal business practice is to renegotiate the payment terms after sales are concluded. Indeed, Runchen states that, because this was its first transaction with this customer, Runchen "tolerate{d} late changes to certain terms," which suggests that it does not typically allow such late changes to occur.⁸³ That Runchen's customer paid late, among other unique circumstances,⁸⁴ and that the record does not support that a late payment is a common or normal occurrence for Runchen, indicates that the POR sale is atypical and may not be representative of Runchen's future sales. As Commerce's *bona fide* determination is based on the totality of evidence, this provides an additional data point regarding the atypical nature of this sale, and further supports that Runchen's POR sale is non-*bona fide*.

As we stated above, it was Runchen's responsibility to place objective, verifiable facts on the record to establish the *bona fides* of its sale. Runchen claims that it reported the post-contract negotiations "truthfully, accurately, and in detail, providing the relevant dates and results and with supporting documents corroborating the involved chain of events."⁸⁵ Yet, Runchen does not cite the location of these supporting documents on this record. As Commerce noted in the *Preliminary Results*, and which Runchen echoed its case brief, Runchen conducted the post-contract payment terms orally. Therefore, it is impossible for Commerce to confirm the facts as laid out by Runchen. Based on the foregoing, we continue to find the tardiness of Runchen's importer in remitting payment, when considered along with other atypical aspects of its sale, weighs in favor of finding the sale non-*bona fide*. This is in accordance with our normal practice.⁸⁶

The petitioner requested that we cite the prior NSR that Runchen participated in and then abandoned as additional factual information to support our conclusion. The petitioner argued that Runchen abandoned the NSR because it knew the sale would be non-*bona fide*, and then requested an AR to avoid the *bona fides* analysis. However, we find that the petitioner's allegations are speculation and not supported by the record, and, for this reason, we have not considered these allegations in our analysis.

⁸¹ See TRBs IDM at Comment 2.

⁸² See *Tianjin Tiancheng*, 366 F. Supp. 2d at 1260-61.

⁸³ See Runchen's June 5, 2019 Supplemental Questionnaire Response at 15.

⁸⁴ Runchen has claimed BPI treatment for the other unique circumstances; for further explanation of these circumstances, see BF Memo at 9.

⁸⁵ See Runchen's Case Brief at 11.

⁸⁶ See e.g., *Certain Preserved Mushrooms from the People's Republic of China: Final Rescission of Antidumping Duty New Shipper Review; 2015*, 82 FR 1317 (January 5, 2017), and accompanying IDM at Comment 2; see also *Calcium Hypochlorite from the People's Republic of China: Final Decision to Rescind the Countervailing Duty New Shipper Review of Haixing Jingmei Chemical Products Sales Co., Ltd.*, 82 FR 15494 (March 29, 2017), and accompanying IDM at 10-11.

b. Single Sale Made During the POR

*Runchen's Comments*⁸⁷

- Commerce concludes that Runchen's single sale, when "viewed together with the totality of the circumstances," weighs against finding it *bona fide*. At the same time, Commerce concludes that "a single sale is not inherently commercially unreasonable."⁸⁸ These conclusions are in direct conflict and render Commerce's analysis impermissibly vague.
- It is not Commerce's policy to find a sale non-*bona fide* because it was a single sale.
- Commerce failed to consider the full record of this segment of the proceeding. Runchen previously explained that it made no subsequent sales because it was waiting until this sale was complete. However, the United States imposed section 301 customs duties on imports of natural honey after Runchen's first sale was imported to the United States. Thus, Runchen decided to wait until there was relief from these additional duties before continuing selling honey to the United States.⁸⁹
- Commerce failed to articulate a rationale or cite factual information to support its conclusion that Runchen's single sale in this review may not be representative of Runchen's future sales.

*Petitioner's Rebuttal Comments*⁹⁰

- Runchen fails to understand that Commerce's *bona fides* analysis is based on the totality of the circumstances surrounding the sale. While the existence of a single POR sale is not dispositive, Commerce may determine that a sale is not *bona fide* when considered along with the other factors examined.
- In the *Preliminary Results*, Commerce cited a CIT case in which the court explained that, when there is a sole sale to assess, it "leaves the door wide to the possibility that the sale may not, in fact, be typical, and that any resulting AD calculation would be based on unreliable data."⁹¹ Thus, Commerce concluded that the existence of a single POR sale, in addition to the other factors examined, weighed against finding Runchen's sale to be *bona fide*.

Commerce Position: For these final results, we continue to find that Runchen's single POR sale, in consideration with other factors, weighs in favor of finding the sale non-*bona fide*. This decision is in accordance with the statutory guidance in section 751(a)(2)(B)(iv)(VII) of the Act, which instructs Commerce to consider any other factors it determines to be relevant as to whether the sale under review is "likely to be typical of those the exporter or producer will make after the completion of the review."⁹² As we further explained in the BF Memo, while a single

⁸⁷ See Runchen's Case Brief at 12-13.

⁸⁸ *Id.* at 12 (citing BF Memo at 9-10).

⁸⁹ See Runchen's Case Brief at 12-13 (citing Runchen's June 19, 2019 Importer-Specific Questionnaire at 5).

⁹⁰ See Petitioner's Rebuttal Brief at 20-21.

⁹¹ *Id.* (citing to BF Memo at 10 which cites *New Donghua*, 374 F. Supp. 2d at 1333, 1344).

⁹² See section 751(a)(2)(B)(iv) of the Act (setting out the factors that Commerce considers to determine whether a sale is *bona fide* in the context of an NSR); see also *Tianjin Tiancheng*, 366 F. Supp. 2d at 1250 (citing *Silicon Techs*, 110 F. Supp. 2d at 992, 995); and *New Donghua*, 374 F. Supp. 2d at 1342 ("Commerce's practice makes clear that it is highly likely to examine objective, verifiable factors to ensure that a sale is not being made to

sale need not be fatal with respect to one-sale reviews, the small amount of data upon which Commerce relies in such cases “leaves the door wide to the possibility that the sale may not, in fact, be typical, and that any resulting {AD} calculation would be based on unreliable data.”⁹³ Indeed, the CIT has held that “single sales must be carefully scrutinized to ensure that new shippers do not unfairly benefit from unrepresentative sales.”⁹⁴ Consistent with our practice and court precedent,⁹⁵ we have carefully scrutinized Runchen’s sale here to determine if it is representative of Runchen’s future selling activity.

Runchen argued that Commerce’s statement that a single sale is not “inherently commercially unreasonable” contradicts its conclusion that Runchen’s making of single POR sale weighs against a finding that the sale is *bona fide*.⁹⁶ However, Runchen mischaracterizes our analysis. Commerce has clearly and consistently stated on this record that we considered many factors in our *bona fides* analysis, and the fact that Runchen made only one sale during the POR was part of this analysis, not the entirety of it.

Finally, and as we explained above, a prospective new shipper is on notice that it is unlikely to establish the *bona fides* of a sale merely by claiming to have sold in a manner representative of its future commercial practices.⁹⁷ Thus, it was incumbent on Runchen to provide the necessary information that would indicate its sale would be representative of future sales. Runchen did not avail itself of this opportunity to explain why a single sale, with several atypical characteristics, would be representative of its future sales. Instead, Runchen merely claimed that: (1) it was waiting until the completion of this sale before making another sale;⁹⁸ and (2) shortly thereafter, the United States imposed additional, significant customs duties in the form of Section 301 tariffs.⁹⁹ However, this argument is not supported by the record. In particular, we note that Section 301 tariffs of 10 percent *ad valorem* for natural honey (HTSUS 0409.00.00) became effective September 24, 2018, and this tariff rate increased to 25 percent *ad valorem* on January 1, 2019.¹⁰⁰ Because Runchen’s POR sale concluded significantly before either duty was imposed,¹⁰¹ there was ample time for Runchen to make additional sales prior to the imposition of the Section 301 duties.

In sum, we disagree that Commerce failed to articulate a rationale or cite factual information to support our conclusion that Runchen’s single POR sale, when taken into consideration with all the other factors (*i.e.*, in totality) weighs in favor of finding the sale non-*bona fide*.

circumvent an antidumping duty order. Thus, a prospective new shipper is on notice that it is unlikely to establish the *bona fides* of a sale merely by claiming to have sold in a manner representative of its future commercial practices.”)

⁹³ See BF Memo at 9-10 (citing *New Donghua*, 374 F. Supp. 2d at 1344 (citation omitted)).

⁹⁴ See *Tianjin Tiancheng*, 366 F. Supp. 2d at 1263.

⁹⁵ See, e.g., *Silicon Metal* IDM at Comment vi; see also *TRBs* IDM at Comment 2.

⁹⁶ See Runchen’s Case Brief at 12 (citing BF Memo at 9-10).

⁹⁷ See *New Donghua*, 374 F. Supp. 2d at 1339.

⁹⁸ See Runchen’s Case Brief at 12 (citing Runchen’s June 19, 2019 Importer-Specific Questionnaire at 5).

⁹⁹ *Id.*

¹⁰⁰ See *Notice of Modification of Section 301 Action: China’s Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, 83 FR 47974-75 (September 21, 2018).

¹⁰¹ See Runchen’s April 11, 2019 Section A Questionnaire Response at Exhibit A-8.

c. Importer and Exporter Experience and the Likelihood of Future Sales

In the BF Memo, we identified numerous concerns¹⁰² regarding Runchen's and its customer's experience in the honey industry that suggested the POR sale would not be representative of Runchen's future sales. Considering the reasons raised, we concluded that there were clear concerns over whether any resulting AD calculation would be based on reliable data and whether any inferences can be drawn with respect to Runchen's future selling practices. Thus, we found that these additional factors weigh against finding the sale *bona fide* for AD purposes.

*Runchen's Comments*¹⁰³

- Commerce failed to explain precisely how Runchen's experience indicated that its POR sale is not representative of future sales or how any data on the record are not reliable. Commerce also failed to provide any factual basis for finding that the ultimate sale is atypical.
- Commerce's conclusion suggests that Runchen's and its customer's inexperience in the honey industry constituted evidence that the sale was not *bona fide*. This would undermine the reasoning behind the statute governing NSRs and Commerce's policy of being open to the analysis of new producers and exporters.
- Commerce seems to imply that, in order for Runchen's sale to be *bona fide*, Runchen's future sales should be of the exact same product, in similar quantities, in the same packaging, to the same customer. If so, Commerce must articulate how this is permissible and in accordance with law.

*Petitioner's Rebuttal Comments*¹⁰⁴

- Commerce's *bona fide* sales analysis is based on the totality of the circumstances. Commerce did precisely what it was supposed to do in the *Preliminary Results* by examining all facts to determine whether they support finding that the sale was representative and *bona fide*.
- The record evidence contains overwhelming evidence that the circumstances of the sale were unusual.¹⁰⁵ Commerce correctly concluded that these additional facts indicate that Runchen's sale is atypical and not representative of the sales it would make after completion of the review, in accordance with section 751(a)(2)(B)(iv)(VII) of the Act.

Commerce Position: We continue to find that Runchen's customer's experience in the honey industry, among other factors, suggests that Runchen's POR sale would not be typical of the type of sales Runchen would make after completion of this AR. As a result, this weighs in favor of finding the sale non-*bona fide*. Section 751(a)(2)(B)(iv)(VII) of the Act instructs Commerce to

¹⁰² Some of the reasons include: (1) the atypical nature of Runchen's POR sale vis-à-vis its normal production line; (2) the type of honey used for the POR sale; (3) Runchen's customer lack of experience in the honey industry; (4) the fact that Runchen's customer was the importer on record and accepted responsibility for the AD duty, despite its limited experience in this industry; (5) the difficulty of Runchen's customer in finding a buyer; and (6) the identity of the ultimate customer. Because much of the discussion, and several other reasons not listed, are BPI, for a complete discussion see BF Memo at 10-11.

¹⁰³ See Runchen's Case Brief at 14-16.

¹⁰⁴ See Petitioner's Rebuttal Brief at 21-23.

¹⁰⁵ *Id.* at 22 (citing BF Memo at 10-11).

consider any other factors it determines to be relevant as to whether the sale under review is “likely to be typical of those the exporter or producer will make after the completion of the review.”¹⁰⁶ Commerce finds that consideration of Runchen’s and its U.S. customer’s experience together is relevant and informs our decision as to whether the sale is commercially reasonable or atypical. This type of analysis is consistent with Commerce’s practice.¹⁰⁷ Additionally, in *New Donghua*, the CIT supported Commerce’s decision to rescind an NSR based, in part, on the importer’s lack of experience and behavior that was inconsistent with good business practices.¹⁰⁸

In this review, Commerce found ample evidence demonstrating that Runchen and its U.S. customer did not have a long-standing business relationship.¹⁰⁹ Further, Runchen’s POR sale was not representative of Runchen’s typical product line and Runchen’s customer had no experience in the honey industry.¹¹⁰ This lack of historical experience raises questions as to whether the POR sale is “likely to be typical of those the exporter or producer will make after the completion of the review.”¹¹¹ We agree that the lack of history between Runchen and its U.S. customer does not provide definitive evidence that the sale at issue was not *bona fide*; however, the newness of that relationship does raise questions as to whether the POR sale is representative of Runchen’s future sales. It was incumbent on Runchen to provide objective and verifiable information that demonstrates that the sale is, in fact, representative of such sales.

We disagree with Runchen that Commerce failed to explain the basis for our conclusions. In the BF Memo, we cited numerous reasons why Runchen’s and its U.S. customer’s experience and current business operations demonstrated that Runchen’s POR sale is not representative of Runchen’s future sales; we also explained that, due to these reasons, Commerce has clear concerns over whether any resulting AD calculation would be based on reliable data.¹¹² Runchen failed to refute or address any of these concerns. In light of the apparent financial nonviability of the transaction for a sale parties knew would serve as the basis of establishing a separate rate, we find that the lack of experience on the part of the importer and exporter is relevant and weighs in favor of finding the sale non-*bona fide* for AD purposes.

¹⁰⁶ See section 751(a)(2)(B)(iv) of the Act (setting out the factors that Commerce considers to determine whether a sale is *bona fide* in the context of a new shipper review); see also *Tianjin Tiancheng*, 366 F. Supp. 2d at 1250 (citing *Silicon Techs*, 110 F. Supp. 2d at 992, 995); and *New Donghua*, 374 F. Supp. 2d at 1342 (“Commerce’s practice makes clear that it is highly likely to examine objective, verifiable factors to ensure that a sale is not being made to circumvent an antidumping duty order. Thus, a prospective new shipper is on notice that it is unlikely to establish the *bona fides* of a sale merely by claiming to have sold in a manner representative of its future commercial practices.”).

¹⁰⁷ See, e.g., *Silicon Metal IDM* at Comment vi.

¹⁰⁸ See *New Donghua*, 374 F. Supp. 2d at 1344, 1345.

¹⁰⁹ See BF Memo at 10-11.

¹¹⁰ Much of the evidence cited is BPI. For a comprehensive list of all the evidence on which these conclusions are based, see BF Memo at 10-11.

¹¹¹ See section 751(a)(2)(B)(iv) of the Act.

¹¹² See BF Memo at 10-11.

V. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the positions set forth above. If this recommendation is accepted, we will publish the final results of the administrative review in the *Federal Register*.



Agree

Disagree

 Recoverable Signature

X 

Signed by: JEFFREY KESSLER