

MEMORANDUM TO: James J. Jochum
Assistant Secretary
for Import Administration

FROM: Joseph A. Spetrini
Deputy Assistant Secretary
for Import Administration, Group III

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty Order for Honey from Argentina; Notice of Final Results of Antidumping Duty Administrative Review (A-357-812)

Summary

We have analyzed the comments and rebuttal comments of interested parties in the antidumping duty review of honey from Argentina (A-357-812). As a result of our analysis, we have made changes in the margin calculations. We recommend that you approve the positions we have developed in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in this investigation for which we received comments and rebuttal comments from parties:

Cost of Production (General)

1. Reported Bee Feed Costs
2. Labor Cost Data
3. Yields
4. Wholesale Price Index
5. Other Cost Issues

ACA

6. Foreign Exchange Loss
7. Testing Expenses

HoneyMax

8. HoneyMax Middleman

9. Beekeeper 13 Costs
10. Missing Fifth Supplier
11. Date of Sale
12. Credit Expenses
13. Initiation of Cost Investigation
14. CEP Profit Ratio

Nexco

15. Model Match Hierarchy

Seylinco

16. Sale Diverted From Third Country To The United States
17. Classification of Freight Charges
18. Unreported Bank Charges

Other Changes

19. HoneyMax Billing Adjustment

Background

We published in the Federal Register the preliminary results of this review on January 6, 2004. See Honey from Argentina: Preliminary Results of Antidumping Duty Administrative Review, 69 FR 621 (Preliminary Results). Subsequent to the preliminary results, we also completed a preliminary sales below cost analysis for HoneyMax on March 17, 2004. See Memorandum from Brian Sheba, Case Analyst, to Donna Kinsella, Case Manager, Antidumping Duty Review of Antidumping Order on Honey from Argentina: Preliminary Sales Below Cost Analysis for HoneyMax S.A. (HoneyMax) (on file in the CRU, room B-099 of the main Commerce building).

The period of review (“POR”) is May 11, 2001 through November 20, 2002. The review covers honey sales exported by five exporters: Asociacion de Cooperativas Argentinas (“ACA”), HoneyMax S.A. (“HoneyMax”), Nexco S.A. (“Nexco”), Seylinco S.A. (“Seylinco”), and TransHoney S.A. (“TransHoney”). We invited parties to comment on our preliminary results. The respondents submitted comments on the preliminary results as follows: ACA on February 6, 2004; HoneyMax on February 5, 2004, Nexco on February 5, 2004; Seylinco on February 5, 2004. TransHoney did not file comments. Petitioners filed comments on the preliminary results on February 6, 2004 and filed rebuttal comments on February 13, 2004. The respondents filed rebuttals as follows: ACA on February 12, 2004, Nexco on February 12, 2004, Seylinco on February 12, 2004, and TransHoney on February 12, 2004. HoneyMax did not file rebuttal comments.

We also invited parties to comment on our post-preliminary sales below cost analysis for HoneyMax. HoneyMax submitted comments on March 31, 2004, comments on April 2, 2004. Petitioners submitted comments on April 5, 2004. Petitioners submitted rebuttal comments on April 7,

2004 and HoneyMax submitted rebuttal comments on April 8, 2004.

Scope of Review

The merchandise under review is honey from Argentina. For purposes of this review, the products covered 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 under review 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 CBP purposes, the Department’s written description of the merchandise under this order is dispositive.

Changes Since the Preliminary Results

1. Cost Analysis for HoneyMax - See Memorandum from Brian Sheba, Case Analyst, to Donna Kinsella, Case Manager, Antidumping Duty Review of Antidumping Order on Honey from Argentina: Preliminary Sales Below Cost Analysis for HoneyMax S.A. (HoneyMax) (Mar. 17, 2004) (on file in the CRU, room B-099 of the main Commerce building).
2. Reported Bee Feed Costs - See Comment 1 below
3. Labor Cost Data - See Comment 2 below
4. HoneyMax Date of Sale - See Comment 11 below
5. HoneyMax Correction of Credit Expenses - See Comment 12 below
6. Seylinco Classification of Freight Charges - See Comment 17 below
7. Seylinco Unreported Bank Charges - See Comment 18 below
8. Other Changes: HoneyMax Classification of Billing Adjustment - See Comment 19 below

Discussion of the Issues

Comment 1: Reported Bee Feed Costs

Petitioners argue that, for the final results, the Department should use an alternative source for determining bee feed costs. Petitioners contend that the beekeepers were unable to provide supporting documentation for the reported feed costs. Additionally, petitioners assert that the beekeepers estimated feed consumption quantities were based solely on the respondents’ estimated historical experiences and could not be supported.

Further, the petitioners point out that the actual purchases of bee feed for Beekeeper 1 and 6 appear to contradict the claimed reported costs. In addition, Beekeeper 7 reported no feed consumption at all, but claims that honey is left in the hives for feeding. However, no support was provided to substantiate the amount of honey claimed to have been left in the hive for feeding purposes.

Lastly, the petitioners claim that Beekeeper 10 based his reported feed consumption solely on his knowledge, and no records were provided to support that knowledge.

According to the petitioners, not only were the Beekeepers' reported feed costs unverified, but the reported hive balances could not be documented. As a result, because of the unsubstantiated figures, petitioners suggest that the Department use the bee feed costs from petitioners' submission (see, e.g., Petitioners' May 12, 2003 Letter at Exhibit 1) as an alternative source in the calculation of feed costs for the final results.

TransHoney and ACA object to the suggestion that the beekeepers reported consumption rates and bee feed costs should be replaced by the petitioners' own consumption rates and costs based on U.S. sugar prices. TransHoney argues that the petitioners' proposed feed consumption figures are unsupported and may not be similar to the consumption rates in Argentina. TransHoney argues that bee feeding rates depend heavily on conditions within the area of the consumption such as climate, length of winter, available local food supplies, and availability of alternative food (e.g., internally produced honey). Further, TransHoney states that even if the consumption rates were similar, sugar costs in the United States are much higher than in Argentina.

In addition, TransHoney points out that the Department was aware of the beekeepers minimal financial and production records. TransHoney argues that the beekeepers should not be penalized for their lack of bee feed consumption rates, inventory or purchase records.

TransHoney states that its reported bee feed costs for its beekeepers were good faith estimates based on industry standards for average bee feed consumption and the prevailing cost of sugar during the cost reporting period ("CRP").

With respect to the petitioners' arguments concerning Beekeeper 6, ACA points out that the bee feed consumed during the CRP was used to accurately calculate the actual cost of bee feed for the CRP. ACA explained that although Beekeeper 6 did purchase sugar during the CRP, those purchases were made after the last feeding occurred. Therefore, ACA contends that those feed purchases were not related to the cost of producing honey that was harvested during the CRP. ACA contends in response to petitioners' argument regarding Beekeeper 7's bee feed costs that if imputed costs were assigned for the value of the honey left in the hives as bee feed costs then the Department would likewise need to increase Beekeeper 7's total production quantity to include the honey used for feed. ACA states with respect to Beekeeper 10, that the Department was able to verify the purchases of sugar through invoices and check the accuracy of its response during verification. In conclusion, respondents note that there is no justification to replace the reported bee feed costs with an alternative value for purposes of the final results.

Department's Position: We agree with the petitioners, in part, that an alternative public source should be used as a benchmark to determine the appropriate bee feed cost for each beekeeper. As noted by both the petitioners and respondents, the beekeepers had minimal to no supporting documentation and evidence related to the reported bee feed consumption rates. Although the respondents claim that the reported bee feed costs for its beekeepers were good faith estimates based on industry standards for

average bee feed consumption during the cost reporting period (“CRP”), the fact remains that these estimates cannot be tied to the records of the beekeeper or other verifiable sources. See, Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from India, 63 FR 72246 (Dec. 31, 1998), where the Department rejected an allocation methodology because it relied purely on unsubstantiated estimates.

In accordance with section 773(f)(1)(A) of the Tariff Act of 1930 (“the Act”), as amended, the Department normally relies on data from a respondent’s books and records where those records are prepared in accordance with the home country’s GAAP, and where they reasonably reflect the costs of producing the merchandise. However, when a respondent’s submitted costs do not reasonably reflect the costs of producing the merchandise due to limitations in the respondent’s records kept in the ordinary course of business, the Department’s practice is to take a non-adverse facts available approach to accurately reflect the cost of producing the merchandise. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Durum Wheat and Hard Red Spring Wheat from Canada, 68 FR 52741 (Sept. 5, 2003) (“Canadian Wheat (Final)”).

In this case, the reported bee feed costs are imputed amounts calculated based on estimated consumption rates and an average cost of sugar, which was not recorded in the beekeepers books and records. Therefore, in order to determine a cost that reasonably reflects the cost of feeding the bees, we have used as a benchmark the bee feed costs published in the 1999 Gestion Apicola cost studies (“Argentine cost studies”) adjusted for inflation and yield differences. As such, in using the cost studies as a benchmark, we applied as facts otherwise available the higher of the reported bee feed costs or the adjusted bee feed costs from the Argentine cost studies.

With respect to the alternative source suggested by the petitioners, the Department agrees with respondents that the petitioners’ bee feed costs would not reflect the costs incurred in Argentina for the CRP. However, we note that the petitioners provided both its own bee feed costs and adjusted costs from the Argentine cost studies in its cost allegation. As such, for the cost initiation the Department “relied on the Argentine beekeeper cost studies as the starting point of the cost calculation because they more accurately reflect the costs of producing honey in Argentina.”¹ For the final results, we have relied on the adjusted bee feed costs from the Argentine cost studies adjusted for inflation and yields as the benchmark for the reported costs.

Lastly, we disagree with ACA’s arguments with respect to Beekeeper 7 and 10. According to respondent, Beekeeper 7 maintained honey in the hives for feeding and if an imputed amount was included in the reported cost then the production quantities should be increased. For Beekeeper 10, respondent stated that the Department was able to verify the purchases of sugar through invoices and check the accuracy of its response during verification. See Memorandum to Neal M. Halper from James Balog, Verification Report on the Cost of Production and Constructed Value Data Submitted by Beekeeper 10, p. 9 (Jan. 7, 2004) (on file in the CRU, room B-099 of the main Commerce building).

¹ See Memorandum to Barbara E. Tillman from The Team, Petitioners Allegation of Sales Below the Cost of Production (July 2, 2003).

However, as noted above, due to the minimal records maintained in the normal course of business by each beekeeper, we were not able to substantiate the claims made by Beekeeper 7 that honey was maintained in the hives. In addition, for Beekeeper 10, although we verified purchases of sugar, we were unable to trace the amount of sugar consumed during the CRP to the Beekeeper's books and records. As a result, for these two Beekeepers', as well as for Beekeeper 14 which claimed to maintain honey in the hive for feeding, we have also applied as facts otherwise available the higher of the reported bee feed costs or the adjusted bee feed costs from the Argentine cost studies. See Canadian Wheat (Final) and accompanying Issues and Decision Memorandum for the Final Determinations of the Antidumping Duty Investigation of Certain Durum Wheat and Hard Red Spring Wheat from Canada, Comment 11 (Sept. 5, 2003) ("Canadian Wheat Issues and Decision Memorandum").

Comment 2: Unsupported Labor Cost Data

Petitioners object to the Department's methodology used in the calculation of the imputed per hive labor rate for the preliminary results of this review. Petitioners claim that in some instances the Department applied a lower labor rate than what was submitted by the individual respondents. Petitioners note that section 776(a) of the Act provides that, if necessary information is not available on the record, or if an interested party fails to provide such information in a timely manner or in the form or manner requested, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable results. Petitioners argue that in doing so the Department should not apply facts available that actually benefit the respondents.

Petitioners point out that not all of the beekeepers were verified and that the Department should not have assumed that the reported labor costs were over reported for the unverified beekeepers. Therefore, petitioners state that it is not valid to replace the reported higher labor costs with lower cost for beekeepers that were not verified. Further, the petitioners state that the beekeepers that were verified by the Department failed to support their reported labor costs and cannot be rewarded by substitution of a lower alternative value. The petitioners note that TransHoney's reported owner labor costs are higher than the surrogate value used by the Department in the preliminary results. Therefore, the petitioners contend that for each type of labor (hired laborers or owner) that could not be supported at verification, the Department should use the higher of the reported or an appropriate surrogate for the final results. The petitioners hold that an alternative source may serve as a benchmark to determine if reported figures are reasonable. However, the reported figure should not be rejected, even if it was not supported, if it equals or exceeds the benchmark.

TransHoney refutes the argument raised by petitioners that its beekeeper labor costs were lowered by using the alternative value of the verified labor costs of one of ACA beekeepers for the preliminary results. TransHoney points out that each of its beekeeper's total reported labor costs were substantially increased by the Department's substitution of the alternative values. Therefore, TransHoney contends that the petitioners' proposed alternative calculation is without merit.

TransHoney asserts that the Department should continue to use the beekeepers labor costs as adjusted for these results.

ACA did not comment on this issue.

Department's Position: We agree with the petitioners, in part, that the imputed labor rate calculated for the preliminary results should be used as a benchmark in determining whether the reported labor cost reasonably reflects the cost of producing honey. As noted by the petitioners, with the exception of one beekeeper, the beekeepers had minimal to no supporting documentation and evidence related to the reported labor costs.

As noted in Comment 1 above, the Department normally relies on data from the respondent's books and records prepared in accordance with the home country's GAAP, where they reasonably reflect the costs of producing the merchandise. See Canadian Wheat Issues and Decision Memorandum, Comment 11. However, when a respondent's submitted costs do not reasonably reflect the costs of producing the merchandise due to limitations in the respondent's records kept in the ordinary course of business, the Department's practice is to take a non-adverse facts available approach to accurately reflect the cost of producing the merchandise. Because the reported labor costs, for all but one beekeeper, were based on estimates that were not recorded in the beekeepers' books and records and could not be substantiated, for the preliminary results, we imputed an average per hive labor rate. The average per hive labor rate was based on both verified records of one beekeeper and a public source published by the Argentine Ministry of Labor, Employment and Social Security. See Memorandum to Neal M. Halper from The Team, Cost of Production and Constructed Value Adjustments for the Final Results (May 21, 2004). We multiplied the resulting per hive labor rate by the number of hives each beekeeper maintained during the cost reporting period ("CRP") to obtain the total labor cost used in the calculation of the COP and CV for each beekeeper. However, for these final results, we have determined that it is more appropriate to set the imputed average per hive labor rate (*i.e.*, verified and corroborated by public sources) as a benchmark, not the ceiling. We find that using the imputed average per hive labor rate as the floor (*i.e.*, the lowest), rather than the ceiling (*i.e.*, the highest), provides a better benchmark for comparison to the reported rates. As such, for the final results we corroborated the beekeepers' reported costs, using data that is both verified and obtained from published public sources, and have applied as facts otherwise available the higher of the reported labor costs or the imputed labor costs.

We disagree with the petitioners assertion that we should segregate the imputed average per hive labor rate based on owner and staff labor and use two different benchmarks in calculating the total labor cost for each beekeeper. The imputed average per hive labor rate used as the benchmark accounts for the total labor cost needed to maintain and produce honey for one hive, including staff and owner labor. Therefore, it is not necessary to segregate the labor rates and compare each rate separately.

Further, we disagree with TransHoney's assertion that the Department's substitution of the alternative values for the preliminary results substantially increased the reported labor costs. We note

that after adjusting TransHoney's reported nominal costs for the effects of inflation and comparing the inflated labor costs to the imputed average per hive labor rate, some beekeepers' costs increased and some did not.

Comment 3: Yields

Petitioners argue that the reported cost should be adjusted to account for yields for the 2002-2003 growing season (the season after the cost reporting period ("CRP")). According to petitioners, one important aspect of the Department's verification efforts was to compare yields for the CRP (*i.e.*, the 2001-2002 season) against yields for the 2002-2003 season. Petitioners assert that the significant changes in yields should be taken into account given that the period of review covers 19 months, many of which are in the 2002-2003 season. As such petitioners state that it is the Department's practice to adjust costs if reporting for a period other than the period of review is determined to represent a significant distortion. Petitioners further assert that the Department's practice is to "test the impact of the shift in the cost reporting period to ensure that the use of fiscal year costs is not distortive for purposes of our COP and CV analysis." See Notice of Final Determination of Sales at Less Than Fair Value: Search Term Begin Emulsion Styrene- Butadiene Rubber From The Republic of Korea, 64 FR 14865, 14867 (Mar. 29, 1999) ("Rubber from Korea"). Petitioners argue that in this case, the Department's use of a full year's worth of cost data to represent one growing season does not address the important question of whether costs during the subsequent growing season were significantly different. The petitioners argue that because the record indicates that the POR cost following the CRP rose, an adjustment is required in order to avoid distortion.

Respondents argue that no adjustment is warranted. According to respondents, the Department's cost reporting period corresponds with the bulk of the POR sales. Respondents argue that the CRP was deliberately selected to cover a single 12-month growing cycle, culminating in the harvest. According to respondents, the CRP was not just a random period of time, but instead was selected to include the growing period that corresponded most directly with the sales made by TransHoney and the other exporters during the POR and was not intended to cover the same period of time as the POR (18 months). According to respondents, the harvest for the 2001-2002 CRP took place between December 2001 and April/May 2002 and virtually all sales in the POR were made in or after December 2001. Thus the CRP is specifically relevant to the cost of production for the POR sales reported. According to respondents, no honey produced during the 2002-2003 growing season (the season the petitioners wish to include by extrapolation into the calculation) was sold during the POR. Respondents argue that because none of the honey in the 2002-2003 growing season was sold during the POR, the honey production costs in those months have no relevance to the sales made in the POR and the yield variations in the 2002-2003 season are irrelevant to the cost of honey sold in the POR.

Department's Position: We agree with respondents. Many agricultural products, as is the case with honey, have a defined growing season which culminates in the harvest. See *e.g.*, Notice of Preliminary Determination at Less Than Fair Value and Postponement of Final Determination: Fresh Tomatoes

from Mexico, 61 FR 56610 (Nov. 1, 1996). In this instance, the POR covers a 18 month period from May 2001 to November 2002. The 2001-2002 growing season for honey in Argentina began in May or June 2001. Harvesting for the 2001- 2002 growing season began in December 2001 and continued until April or May 2002. Thus, in order to calculate the cost of producing honey for one complete growing season that corresponds most closely to the POR, we determined that the 2001-2002 season was the most appropriate period. We note that most of the sales of honey reported during the POR by the respondents were produced during the 2001-2002 growing season. Further, as the harvest period for the 2002-2003 growing season did not begin until December 2002, which is subsequent to the end of the POR, none of the sales reported were of honey produced during the 2002-2003 growing season. As a result the Department chose the 2001-2002 growing season to match the sales made during the POR with the cost incurred during the growing season in which the honey was produced. The fact that yield losses increased during the 2002-2003 growing season as compared to the 2001-2002 growing season is irrelevant, as it is the 2001-2002 growing season costs on which we are relying for the cost of production and constructed value computation.

Comment 4: Whole Sale Price Index

ACA argues that the consumer price index (“CPI”), rather than the wholesale price index (“WPI”) is the appropriate basis for adjusting honey input costs to account for inflation in Argentina. ACA cites the July 2, 2003 Memorandum to Barbara Tillman from The Team Petitioner’s Allegation of Sales Below the Cost of Production by Cia Europeo Americana, S.A., HoneyMax S.A., Nexco, S.A., Seylinco S.A. and TransHoney S.A. as support that the Department determined that the appropriate inflation adjustment for beekeepers was the consumer price index. ACA further claims that the Department instructed the beekeepers to use the CPI when adjusting for inflation, and without explanation used the WPI in the preliminary results. ACA cites the September 17, 2003, section D response at page D-17 for Beekeeper 7 as support for this claim. ACA asserts that the CPI is a basic measure of price changes of goods purchased by consumers including food, transportation costs, and basic services, which are consistent with purchases by the beekeepers of such basic inputs as sugar, electricity, fuel, insurance, and maintenance for light trucks. ACA cites the December 30, 2003, memorandum Cost of Production Adjustments for the Preliminary Results - Asociacion de Cooperativas Argentinas (“ACA”) Beekeeper Respondents from the team to Neal M. Halper and a definition of the CPI from the Instituto Nacional de Estadistica Y Censos as support for its assertion. ACA argues that the WPI is an index based on a basket of goods that bear little relation to the inputs generally used by beekeepers. ACA claims that a significant part of the WPI is based on price movements in primary products such as agricultural products, crude petroleum, mineral products and fishery production and it also depends heavily on a basket of imported products. Finally, ACA contends that the primary products and imported products, neither of which are related to beekeeping costs, account for much of the difference in inflation between the CPI and WPI. Thus, ACA argues that the CPI should be used for the final results.

In its rebuttal brief, TransHoney argues that ACA’s suggestion for replacing the WPI with the CPI is not appropriate. According to TransHoney, because of the high rate of inflation during some

months of the POR, the Department has subjected the various respondent's reported production costs to an inflation adjustment to restate those costs in constant value in order to avoid distortion that could arise from using historical costs in a period of high inflation. TransHoney argues that in order for the inflation adjustment to be accurate and legitimate, it is essential that the inflation index used be relevant to the kinds of costs that are being adjusted for inflation. According to TransHoney, the IPIM index ("the WPI") is used in the ordinary course of business by production companies and other commercial entities, including TransHoney, in its financial statements to account for inflation. According to TransHoney, the IPIM index is not limited to raw materials but covers the broad range of materials, goods and equipment, such as steel for steel honey drums, wood and fasteners for hive boxes, stainless steel used in extractors, centrifuges, trucks, sugar, etc. TransHoney argues that the Department used the appropriate commercial inflation index, the WPI, in its preliminary results and should continue to use this index for the final results.

The petitioners argue that the WPI is the appropriate basis for adjusting honey input costs to account for inflation. Petitioners contend that the respondent cited no precedent or statement of policy in support of its request for the Department to use the CPI as opposed to the WPI, and the Department's usual policy is to use wholesale price indices when adjustments to input costs are necessary. The petitioners cite the April 1997 memorandum Index of Factor Values for Use in Antidumping Duty Investigations Involving Products from Non-Market Economy ("NME") Countries Other than the People's Republic of China ("PRC") from Richard W. Moreland to all reviewers as support for its claim. The petitioners allege that the Department should adhere to a consistent practice, and even if the input components of an investigated product might be considered "consumer" products it does not mean that there is not a wholesale market for such products or that using the WPI would be inappropriate. The petitioners contend that honey inputs such as sugar, electricity, and fuel likely have both wholesale and retail prices. Accordingly, petitioners argue that the Department's use of the WPI need not be changed and that if a different index is used than it should be explained and applied consistently in this and future antidumping proceedings.

Department's Position: We agree with the petitioners and TransHoney. Because of the high rate of inflation in Argentina during the POR, we have adjusted the respondents' reported production costs for inflation to restate those costs in constant currency in order to avoid distortions that could arise from using nominal costs in a period of high inflation. Originally, due to our limited knowledge of the beekeeping industry in Argentina early in the proceeding, we instructed the respondents to use the CPI, as noted in the Memorandum to Barbara E. Tillman from The Team, Re: Petitioner's Allegation of Sales Below the Cost of Production by Cia Europeo Americana, S.A., HoneyMax S.A., Nexco, S.A., Seylinco S.A. and TransHoney S.A. dated July 2, 2003 (on file in the CRU, room B-099 of the main Commerce building). Based on our industry knowledge at that point in the proceeding, we believed that a majority of the beekeeper operations and inputs were limited to purchasing and using consumer type goods bought at retail. Therefore, we instructed respondents to use the CPI because this index is based on measuring price fluctuations from the perspective of individual consumers and its major components include housing, food, transportation, medical care, clothing and entertainment. However,

it became evident from the questionnaire responses that most of the major inputs to beekeeping included non-consumer type goods, such as steel for steel honey drums, wood and fasteners for hive boxes, stainless steel used in extractors, centrifuges, and trucks, and sugar. Therefore, for the preliminary results, we used the WPI to adjust the respondents' costs for the effects of inflation because this index is based on measuring price fluctuations of primary products, manufactured goods and electric power which are components more closely related to the inputs to making honey in Argentina. See Memorandum to Neal M. Halper from James Balog, Verification Report on the Cost of Production and Constructed Value Data Submitted by Beekeeper 10, (Jan. 7, 2004) ("Beekeeper 10 Verification Report"); See also Verification Report for Beekeepers 1, 2, 6, and 7 (Jan. 7, 2004) (on file in the CRU, room B-099 of the main Commerce building).

Furthermore, in instances where beekeepers prepared financial statements for their business operations, the WPI was used to index the statements to constant currency. Because section 773(f)(1) of the Act directs the Department to use the normal books and records of the respondent company when determining the cost of production, the WPI is the logical index to use. Thus, for the final results we have continued to use the WPI to index the historical costs of each respondent.

Comment 5: Other Cost Issues

Petitioners argue that for all understated cost elements found for the selected sample of beekeepers that were verified, the Department should apply the same adjustments to data reported by the unverified beekeepers. The understated costs include, but are not limited to, any understatements resulting from the use of estimated consumption amounts. In addition, the petitioner asserts that the Department should apply any adjustments made to the understated cost elements found during verification for the TransHoney middleman/collector to the unverified ACA collector.

Respondents did not comment on this issue.

Department's Position: In this case, there are several broad based methodological adjustments (i.e., bee feed, labor, and indexing) which should be applied to all beekeepers, whether verified or not. However, we disagree with the petitioners that we should adjust the non-verified beekeepers costs based on the beekeeper specific findings at the verifications for those beekeepers verified. Each of the beekeepers selected by the Department for cost reporting purposes are separate companies, independent of one another, with unique cost structures and accounting records. While all of the beekeepers were subject to verification, we decided only to verify certain companies. For those companies that were not verified, the case record consists of the information requested by the Department and submitted by those beekeepers. It is from this information that we must determine the accuracy and reliability of the information provided. Each of the adjustments noted for the various verified beekeepers were isolated errors unique to each respective verified beekeeper. As the adjustments noted at verifications are specific to each beekeeper verified, it would be inappropriate to rely on those errors and inaccuracies as a means to justify adjusting the cost data provided by other separate and independent companies. See Memorandum to Neal M. Halper from James Balog,

Verification Report on the Cost of Production and Constructed Value Data Submitted by Beekeeper 10, (Jan. 7, 2004) (“Beekeeper 10 Verification Report”); See also Verification Report for Beekeepers 1, 2, 6, and 7 (Jan. 7, 2004) (on file in the CRU, room B-099 of the main Commerce building).

Lastly, we note that the petitioners’ argument related to adjusting ACA’s middleman costs based on the adjustments made to TransHoney’s middleman/collector is moot. Specifically, the reason for including a cost for the middleman/collector in the reported beekeepers costs for TransHoney is that the transportation between the beekeepers and the exporter is provided by the middleman/collector. Thus, we included the middleman/collector cost in the reported beekeepers costs. However, the beekeepers that supply honey to ACA provide their own transportation to ACA’s warehouse. As a result, the transportation costs to the exporter for these beekeepers has been captured from the books and records of the beekeepers, and it is not necessary to include additional costs from the middleman/collector.

ACA

Comment 6: Foreign Exchange Loss

ACA argues that the Department improperly included Beekeeper 10’s foreign exchange loss on its dollar denominated loan in the calculation of the financial expense ratio for the preliminary results. According to ACA, Beekeeper 10 reported this loan on his 2001 tax return. At that time, the peso to dollar exchange rate was pegged at 1 to 1. However, Argentina experienced a rapid devaluation of the peso beginning in January 2002. According to ACA, Beekeeper 10 then recalculated the peso value of the debt based on a 3.67 pesos to the dollar exchange rate. The foreign exchange loss was reported as a financial cost on Beekeeper 10’s 2002 tax return. ACA claims that Beekeeper 10 incurred no additional financing or any other costs as a result of the devaluation of the peso and that the value of the 2001 loan remained unchanged in 2002. ACA alleges that the adjustment was taken to reflect the new peso value of the loan following devaluation of the peso in January 2002. Additionally, ACA argues that the Beekeeper’s exchange rate adjustment takes into account the same inflation that the Department accounted for in its consumer price index/wholesale price index (“CPI/WPI”) inflation adjustment and to include both adjustments in the Beekeeper’s costs would result in double counting the expense.

Further, the respondent claims that even if the net foreign exchange loss was properly considered a financing expense, the Department’s allocation of the entire adjustment to the cost reporting period (“CRP”) is incorrect. The proper allocation would be to distribute the adjustment over a reasonable period to account for the devaluation of the peso. ACA argues that the adjustment should be allocated over 10 years because the rapid devaluation in 2002 was the result of a 10 year peg (of the peso) to the dollar that was corrected with a rapid devaluation in early 2002. Finally, ACA contends that even if the entire exchange rate adjustment is properly attributed to the year in which the loss was taken (2002), inclusion of the entire amount in the CRP is improper because only 2 months of 2002 are in the CRP. Therefore, one-sixth of the amount would more accurately reflect the costs

associated with the CRP.

Petitioners argue that the Department's practice is to include as part of financial expenses the net foreign exchange gains or losses that result from transactions and translations based on data for one fiscal year and cites Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Polyvinyl Alcohol From the Republic of Korea ("Polyvinyl Alcohol from Korea"), 68 FR 13681 (Mar. 20, 2003) as support. The petitioners allege that the amount in question appears to represent an exchange loss incurred by Beekeeper 10 which was recognized in the 2002 fiscal year and that because the liability for the loan increased, the Beekeeper incurred an exchange loss due to the translation differences between the nominal amount of the liability and the actual amount. The petitioners contend that the loss occurred entirely in 2002 and thus is properly recognized in full in 2002. Accordingly, the entire exchange-related loss based on the fiscal year must be included in Beekeeper 10's financial expense ratio. Finally, petitioners contend that because the resulting ratio was being applied to monthly costs, the respondent is incorrect in asserting that there was any double counting in making the inflation adjustments to the reported monthly costs. Accordingly, petitioners argue that ACA's requested change to the Beekeeper 10 financial expenses should be rejected.

Department's Position: We agree with petitioners that the full amount of the foreign exchange loss should be included in the interest expense rate calculation. Our current practice is to include the entire amount of the net foreign exchange gain or loss in the financial expense ratio calculation. As explained in Certain Preserved Mushrooms from India: Preliminary Results of Antidumping Duty Administrative Review, 68 FR 11045 (Mar. 7, 2003) ("Mushrooms from India"), the Department instituted a change in practice regarding the treatment of foreign exchange gains and losses effective with the publication of that notice. Under the prior practice the Department requested respondents to identify the source of all foreign exchange gains and losses (e.g., debt, accounts receivable, accounts payable, cash deposits, etc.) at both a consolidated and unconsolidated level. At the consolidated level, only the current portion of foreign exchange gains and losses generated by debt or cash deposits was included in the financial expense ratio. At the unconsolidated producer level, foreign exchange gains and losses on accounts payable were either included in the G&A ratio or, under certain circumstances, in the cost of manufacturing. Foreign exchange gains and losses on accounts receivable at both the consolidated and unconsolidated producer levels were excluded.

Under the new practice, instead of separately identifying foreign exchange gains and losses by source and level of corporate structure, we would normally include in the financial expense ratio calculation all foreign exchange gains and losses from the consolidated financial statements of the respondent's highest level parent company. See Mushrooms from India, 68 FR at 11048. This approach recognizes that the critical factor in analyzing the appropriate amount to include in COP/CV is not the source of the foreign exchange gain or loss, but rather how well the entity as a whole manages its foreign currency exposure. See also, e.g., Mushrooms from India 68 FR at 11048. Companies in the business of producing and selling merchandise are generally not in the business of speculating with foreign currencies. As such, in order to minimize the risk of holding foreign denominated monetary

assets and liabilities, companies often engage in a variety of activities from an enterprise-wide perspective to hedge exposure. Therefore, companies often try to maintain a balanced holding of foreign denominated assets and liabilities in any one currency so as to offset any foreign exchange losses with foreign exchange gains (i.e., hedging its foreign currency exposure on a company-wide basis, not for specific accounts). Including only certain components that result from the company's coordinated efforts to manage its foreign currency exposure fails to adequately reflect the financial results of the enterprise's foreign exchange management efforts. Thus, including all of the foreign exchange gains and losses better reflects the results of the company's foreign exchange management.

In the instant case, Beekeeper 10 reported a loan on his 2001 tax return denominated in US dollars when the peso and dollar were pegged at 1 to 1. In 2002 the peso lost value in relation to the dollar as a result of the devaluation of the peso. Thus, in 2002, it required more pesos to satisfy the loan balance than if the exchange rate had remained at 1 to 1. In simple terms, to satisfy the loan balance it took more pesos than the original recorded amount. This represents a real loss to the company which was recognized as such in the company's 2002 tax return. It is the Department's practice to include such losses in the interest expense rate because the effects of currency fluctuations on foreign denominated loan balances are an added cost of borrowing. See Mushrooms from India, 68 FR at 11048.

Further, as noted, foreign exchange gains and losses are real costs or gains to the Beekeeper in that they represent either additional or reduced Argentine peso payments needed to satisfy the foreign denominated loans or payables, and additional or reduced Argentine peso amounts to be received on foreign denominated account receivables or cash deposits. For Beekeeper 10 the resulting loss is reflected in full in its 2002 books and records. Therefore, the recognition of the total exchange loss in the year incurred is consistent with the Beekeeper's books and records. The fact that the foreign exchange loss arose due to the holding of long-term foreign-denominated debt does not change the fact that during the current year, as a result of the change in exchange rates, the company experienced a real financial gain or loss. To only include the portion associated with current assets or liabilities, or amortize the amount over a selected period, fails to account for the entirety of the Beekeeper's foreign exchange exposure. Such an approach would in effect revert back to our prior practice of picking apart the foreign exchange gains and losses rather than looking to the Beekeeper's exposure as a whole.

In addition, under section 773(f)(1)(A) of the Act, costs shall normally be calculated based on the records of the producer or exporter if such records are kept in accordance with home country generally accepted accounting principles ("GAAP") and reasonably reflect the costs associated with the production and sale of the merchandise. The record shows that the entire amount of Beekeeper 10's foreign exchange loss was reflected as a current year expense in the company's books and records.

Lastly, we disagree with the respondent's assertion that the Beekeeper's exchange rate adjustment takes into account the same inflation that the Department accounted for in its indexing and to include both adjustments in the Beekeeper's costs would amount to double counting. The indexing simply allows the Department to calculate an annual average cost using a constant currency. That is, where monthly amounts are denominated in different currency levels due to high inflation, it is necessary

to restate those amounts to a constant currency before calculating an annual average COP and CV. The average cost is then restated back into the currency levels for each month where a sale took place. The inclusion of the foreign exchange loss recognizes that the Beekeeper had to pay more pesos to satisfy its U.S. dollar denominated loan.

Comment 7: Testing Expenses

ACA states that the Department has erred in the preliminary results of this review, as it did in the investigation, in treating the costs of testing honey as indirect selling expenses. ACA claims that many of its non-U.S. customers (e.g., United Kingdom, Germany, etc.) require that honey be tested for contamination. Many of these same customers specifically require that sampling for testing be carried out under the supervision of an independent international inspection and certification service known as Societe General de Surveillance (SGS). According to ACA, all costs associated with testing for antibiotics and other contaminants, including SGS costs, are spelled out in the sale contracts and incurred as a direct result of a sale to a customer with certain testing requirements or residue limitations.

ACA argues that testing and SGS supervision arise from specific contracts and result in costs that are specific to the sale and shipment in question. ACA alleges that additional testing was performed only when required by the customer and that no testing or SGS supervision was performed on any sale of honey to the United States. ACA continues to state that if additional honey was sold to customers with testing or SGS supervision requirements, additional testing and supervision costs would have been incurred. That is, testing costs would "vary with the quantity sold" which ACA contends to be consistent with the Federal Circuit's definition for direct costs in Zenith Electronics Corp. v. United States, 77 F.3d 426, 431 (Fed. Cir. 1996).

ACA further maintains that testing and SGS supervision are not performed unless there is an open contract with a customer which contains such requirements. ACA reiterates that if there are no open contracts that require testing, no honey is tested. ACA argues that the Department's reliance on the fact that honey is sent for testing "based on several open contracts" as proof that testing costs are indirect is misplaced since, as evident in both the questionnaire responses and verification report, testing only occurs if the sale in question is one for which the customer requires testing.

Petitioners contend that no exporter, including ACA, would want to risk the consequences of selling contaminated products to any major market, including the United States. Petitioners claim that in the original investigation the Department explicitly determined that such testing expenses were indirect because they were incurred whether or not the product being tested is eventually sold to a particular market (e.g. United Kingdom) and because tests were broadly performed in support of all markets. From the record in this first administrative review, petitioners find no evidence to compel the Department to change its earlier decision to treat such testing costs as indirect selling expenses.

Department's Position: We disagree with respondent. Indirect selling expenses constitute fixed expenses that are incurred whether or not a particular sale is made, while direct selling expenses are expenses which can vary from sale to sale, and result from and bear a direct relationship to the

particular sale in question. Sections 772(c)(2)(A) and 772(d)(1) of the Act; Section 351.410(c) of the Department's regulations; Oil Country Tubular Goods From Mexico: Final Results of Antidumping Duty Administrative Review, 66 FR 15832 (Mar. 21, 2001); and Canned Pineapple Fruit From Thailand: Final Results of Antidumping Duty Administrative Review, 65 FR 77851 (Dec. 13, 2000). The evidence on the record of this review indicates that ACA's testing expenses are more properly classified as indirect selling expenses, given that these expenses are often incurred whether or not the product being tested is eventually sold to the market in question. The Department found at verification that ACA could not definitively determine the final destination of honey being tested when ACA sends the honey to the laboratory. See Memorandum to The File from Angela Strom, case analyst, through Donna Kinsella, case manager AD/CVD Enforcement Group III/Office 8, Verification of Asociacion de Cooperativas Argentinas (ACA)'s Questionnaire Responses in the Antidumping Review of the Antidumping Duty Order on Honey From Argentina ("ACA Verification Report"), p. 21 (Nov. 12, 2003) (on file in the CRU, room B-099 of the main Commerce building).

To illustrate, under ACA's current system for identifying and testing honey, honey that failed the testing requirements set forth in a particular contract could be sold to another customer in, perhaps, another market to fulfill contracts with lesser or no testing requirements. Under ACA's treatment of these expenses as direct selling expenses, the expenses would be allocated to only those sales involving testing requirements when in fact some of the merchandise was sold and shipped to other markets and customers that did not have such requirements. Under such treatment, the expenses are then exaggerated for and disproportionate to the sales with specific testing requirements.

Because the testing expenses in question can not be solely attributed to and bear a direct relationship to a particular sale in question and because the record of this review holds no evidence to compel the Department to change its preliminary decision, the Department continues to treat the testing expenses in question as indirect selling expenses for purposes of these final results.

Comment 8: HoneyMax Middleman

HoneyMax argues that the Department's inclusion of the per unit middleman/collector costs to Beekeeper 14's costs is unreasonable. HoneyMax adds that a more reasonable estimate of Beekeeper 14's cost of transporting honey from the beekeeper to the middleman/collector would be to add only a portion of the middleman/collector's costs, i.e., fuel and vehicle expenses, to the beekeeper's costs. Also, HoneyMax argues that the middleman/collector's costs are overstated because the Department allocated an overly high portion of the middleman/collector's total operations to its beekeeping activities. HoneyMax argues that in its December 3, 2003 submission, the middleman/collector claimed that only an irrelevant portion of his overall commercial activities were related to beekeeping. Therefore, HoneyMax argues that the Department's use of a percentage based on TransHoney's middleman costs is inappropriate and inflates HoneyMax's middleman/collector costs.

Petitioners argue that the Department exercised reasonable discretion by adding the per unit middleman collector costs to Beekeeper 14's costs. Petitioners argue that the beekeepers for HoneyMax used estimates in reporting their costs, and therefore, the Department must assess the

estimates and compare them with other cost data available on the record.

Department's Position: We disagree with HoneyMax that the middleman/collector costs allocated to middleman/collector operations are unreasonable. The Department added the middleman/collector costs to Beekeeper 14's production costs because the middleman/collector's costs represent the cost incurred for transportation between the beekeeper and the exporter. Specifically, we included the cost incurred by a middleman/collector that supplies honey to HoneyMax. However, HoneyMax's middleman/collector did not provide support for the percentages used to allocate its total cost of operations to middleman/collector, warehousing, and beekeeper supply activities. The middleman claimed that the allocation percentage to middleman/collector activities was irrelevant, but failed to provide calculations and evidence which supports that allocation percentage. Thus, as facts otherwise available, we have used the allocation percentages reported by TransHoney's middleman and verified by the Department to estimate the cost of transporting honey from the beekeeper to the exporter for HoneyMax. The record evidence indicates that TransHoney's middleman collector operations are similar to HoneyMax's middleman operations. Both have middleman/collector, warehouse operations and beekeeper supply activities. Therefore, we determine that using TransHoney's verified middleman/collector cost allocation percentages to estimate HoneyMax's middleman costs is an appropriate surrogate and have included the adjusted middleman/collector costs in beekeeper 14's costs for these final results.

Comment 9: Beekeeper 13 Costs

According to HoneyMax, Beekeeper 13 reported that he had a beekeeping business as well as two other businesses and that he based his cost estimates on the level of activity and resources devoted to beekeeping relative to his other commercial activities. HoneyMax argues that for the preliminary results, the Department disregarded the information Beekeeper 13 placed on the record regarding his two other commercial activities and erroneously considered many of the expenses to be related solely to his beekeeping activity. According to HoneyMax, these inflated expenses increased Beekeeper 13's per unit cost of production ("COP") by over three and a half times.

Further, HoneyMax argues that if the Department was dissatisfied with the alleged marginal nature of Beekeeper 13's beekeeping activity, the Department should have disregarded Beekeeper 13's cost information and replaced them with a beekeeper's cost that they considered more reliable. Thus, for the reasons noted, HoneyMax objects to the inclusion of expenses that are obviously not related to beekeeping that unjustifiably inflate Beekeeper 13's per unit cost as well as the weighted average per unit cost for HoneyMax.

Petitioners claim that HoneyMax's objections provide unreasonable challenges to the Department in evaluating and revising information submitted by the respondent. Petitioners argue that HoneyMax admitted to using cost estimates that must be scrutinized and revised if found to be unreasonable or inconsistent with other available data. Petitioners contend that adjustments made to Beekeeper 13's costs were within the Department's reasonable discretion.

Department's Position: We disagree with HoneyMax. Under section 773(f)(1)(A) of the Act the Department normally calculates cost based on the records of the exporter or producer of the merchandise provided that the submitted costs reasonably reflect the costs associated with the production and sale of the merchandise. In this instance, the normal books and records consist of IVA sales ledgers, IVA purchase ledgers, VAT returns, and personal income tax returns. The Department analyzed the information on the record. The Department found, however, that some information was incomplete or lacked explanatory language. The Department found for this beekeeper that some of the allocations used were not supported or were used inconsistently.

Four of the expense category adjustments made were rounding adjustments and labor was adjusted using a common adjustment that affected all beekeepers. The remaining expense categories were adjusted by the Department based on the facts available according to section 776(a)(2)(A) of the Act. In addition, section 351.401(b)(1) of the Department's regulations places the burden of establishing the amount and nature of the adjustments on the interested party. Beekeeper 13 did not provide any explanation for exclusion of several proprietary expense items within his overall reconciliation of costs. See Memorandum to Neal M. Halper from The Team, Cost of Production and Constructed Value Adjustments for HoneyMax Beekeeper Respondents, Attachment 13-1 (May 21, 2004).

Additionally, section 351.401(g)(2) of the Department's regulations require that the party seeking to report an expense or price adjustment on an allocated basis must demonstrate that the allocation is calculated on a specific basis and must explain the allocation methodology. As noted by the respondent, Beekeeper 13 used cost estimates to determine the allocation of costs between the beekeeping business and other commercial activities. The fact remains that the Department was unable to obtain support for several of the cost estimates, from the records of the beekeeper or other public sources. See Honey from Argentina– Beekeeper 13 Supplemental Section D Response, Exhibit D-2 (Feb. 3, 2004).

Finally, the Department agrees with the petitioners that all adjustments made for the preliminary results relating to Beekeeper 13 were within the Department's discretion because the submitted information did not reasonably reflect the cost associated with the production and sale of the merchandise. Therefore, we have continued to rely on the adjustments made in the preliminary results for Beekeeper 13.

Comment 10: An Adverse Inference Should Be Applied For Missing "Fifth Supplier"

Petitioners argue that the Department should apply an adverse inference to HoneyMax with regard to one of the suppliers from which the Department originally requested costs. Specifically, petitioners suggest that the Department use the highest cost reported for any other beekeepers on the record in place of the missing fifth HoneyMax supplier. Based on the data provided by HoneyMax, the Department selected a sample of beekeepers and middlemen to base its calculation of cost of production and issued cost questionnaires to these companies. However, after the cost investigation was well underway, HoneyMax informed the Department that one of the suppliers it had identified as a

beekeeper was not a beekeeper. Thus, the Department calculated the cost of production based on the average COP of the other four HoneyMax beekeepers.

Petitioners argue that the Department should find that providing, and then failing to timely correct, a flawed list of suppliers should be treated as a serious deficiency deserving an adverse inference. HoneyMax identified the potential beekeeper respondents in its section A questionnaire response which was filed March 14, 2003, and the fifth supplier was issued a questionnaire on August 28, 2003. However, HoneyMax waited until November 7, 2003, to inform the Department of the supplier's status. Petitioners assert that the untimely revelation that a selected supplier was incorrectly identified as a beekeeper was comparable to an out-and-out refusal to respond. Petitioners cite to Notice of Preliminary Determinations of Sales at Less Than Fair Value: Certain Durum Wheat and Hard Red Spring Wheat From Canada, 68 FR 24707 (May 8, 2003) ("Canadian Wheat (Prelim)") and claims that the Department also faced the question of failure by certain sampled respondents to provide cost responses. Second, petitioners argue that the presence of one non-beekeeper in a five-beekeeper sample also calls into serious question the entire original population upon which the Department based its sample. Accordingly, the Department cannot reasonably have complete confidence in HoneyMax's beekeeper listing. Further, petitioners argue that HoneyMax meets all of the criteria for both the application of facts available and the use of an adverse inference under sections 776(a)(2) and 776(b). According to the petitioner, a complete list of beekeeper suppliers was withheld, with the correction coming only well after the deadline for its submission (i.e., nearly eight months after the original response to section A), and the omission was a material one that significantly impeded the proceeding. Thus, petitioners contend that the Department should apply adverse facts available to the missing fifth HoneyMax supplier in the final results of this review.

Respondent retorts that the petitioner's request to apply an adverse inference to HoneyMax is misguided. First, respondent contends that HoneyMax identified and categorized its suppliers to the best of its ability in its section A response. The Department has no basis, and petitioner has provided none, to determine that HoneyMax did not report this information as accurately as possible. A later discovered mistake is not a reason to assume that HoneyMax deliberately withheld information from the Department or did not do its best to provide the Department with accurate information. Second, the respondent asserts that HoneyMax's notification to the Department was not untimely. HoneyMax learned that the supplier in question was not a beekeeper only after HoneyMax contacted the supplier in connection with the Department's section D questionnaire. HoneyMax had received no information prior to this point to indicate that the supplier list provided to the Department was not correct. Further, the respondent argues that the petitioner waited nearly five months to raise this issue. Last, according to the respondent, HoneyMax should not be penalized for a decision made by the Department. The Department exercised its discretion to use the four remaining selected beekeepers for its cost analysis. HoneyMax requested that the Department contact HoneyMax with any questions the Department may have regarding the information provided, including the fifth supplier. The Department did not request information and, therefore, HoneyMax did not provide further information regarding this matter. Thus, the respondent argues that the Department should not apply an adverse inference for the fifth supplier in the final results of review.

Department's Position: We agree with respondent. Section 776(a)(2) of the Act provides that, if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the Department shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination under this title. Section 776(b) of the Act further provides that adverse inferences may be used when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

In Canadian Wheat (Final), one of the cost respondents did not cooperate to the best of its ability by failing to provide any of the information requested in the section D cost questionnaire with no rationale for why it could not provide such information. See Canadian Wheat (Final), 68 FR 52741, 52743 (Sept. 5, 2003). However, unlike the cost respondent in Canadian Wheat (Final), HoneyMax provided an explanation for why it was not possible to provide the Department with production costs for the fifth supplier. Specifically, HoneyMax filed a statement from the fifth supplier that explained: "We would want to provide any necessary information to contribute to this investigation, but we need to inform you that our company acts as a reseller, buying merchandise from honey producers and selling to exporters. Because we do not account for or incur production costs, we cannot supply the cost information you request." See the English translation Attachment of the letter from White & Case to the Secretary, Honey from Argentina— Section D Extension Request (Nov. 7, 2003) (on file in the CRU, room B-099 of the main Commerce building). Also, respondent offered to provide any additional information the Department might deem necessary. Thus, the Department has no basis to believe that HoneyMax did not report the beekeepers information as accurately as possible and did not cooperate to the best of its ability. There is no information on the record to indicate that HoneyMax delayed notifying the Department as soon as it learned that the fifth honey supplier was not a honey producer. As a result, for these final results, we calculated a simple average of the remaining four selected HoneyMax beekeepers to represent the cost of production.

Comment 11: Date of Sale

HoneyMax stated that while the Department purported to use the shipment date as the date of sale for HoneyMax's U.S. sales in its preliminary results, the Department mistakenly used the U.S. invoice date as the date of sale. See Honey from Argentina: Preliminary Results of Antidumping Duty Administrative Review, 69 FR 621, 623 (Jan. 6, 2004) and Department's Preliminary Results Disclosure Documents for HoneyMax, U.S. Sales Program, Lowest Negative Margins by Match Type, pp. 37-38 (Dec. 30, 2003) (on file in the CRU, room B-099 of the main Commerce building).

Petitioners did not comment on this issue.

Department's Position: We agree with HoneyMax and have corrected the programming error to reflect

date of shipment as date of sale for purposes of these final results. See Memorandum to The File from Brian Sheba, case analyst, through Donna Kinsella, case manager AD/CVD Enforcement Group III/Office 8, Antidumping Duty Review of Antidumping Order on Honey from Argentina; Final Results Analysis for HoneyMax S.A. (HoneyMax) (May 21, 2004) (on file in the CRU, room B-099 of the main Commerce building) (“HoneyMax Final Analysis Memo”).

Comment 12: Correction of Credit Expenses

HoneyMax stated that its post-verification database contained an error in the credit expenses for two U.S. invoices involving the first six observations in the U.S. database. HoneyMax claims this error is typographical and occurred when HoneyMax presented its minor corrections at verification. The year “2003” was mistakenly keyed into the database as the payment date for both invoices instead of “2002.” This mistake had the effect of adding one additional year of credit expense to both invoices.

HoneyMax argues this error is easily confirmed by the verification exhibits and supported by the Department’s verification report. See Memorandum to The File from Brian Sheba, case analyst, through Donna Kinsella, case manager AD/CVD Enforcement Group III/Office 8, Verification of HoneyMax, S.A. Questionnaire Responses in the Antidumping Review of Honey From Argentina (Nov. 7, 2003) (on file in the CRU, room B-099 of the main Commerce building).

Petitioners did not comment on this issue.

Department’s Position: We agree with HoneyMax that this error was typographical and have corrected the database to reflect correct payment date for the two invoices at issue. See HoneyMax Final Analysis Memo.

Comment 13: Initiation of Cost Investigation

HoneyMax reiterates its disagreement with the Department’s decision to reverse its earlier decision not to initiate a cost investigation with respect to HoneyMax. HoneyMax’s arguments may be found in its letter to the Department dated October 8, 2003. See Letter from White & Case to the Secretary of Commerce, Honey from Argentina- Request for Reconsideration of Department’s Reversal of Its Earlier Decision Not to Conduct a Cost Investigation of HoneyMax (on file in the CRU, room B-099 of the main Commerce building).

HoneyMax asserts that the statute requires that the Department have “reasonable grounds to believe or suspect” that below-cost sales have occurred before initiating a sales below cost investigation. See Section 773(b)(1) of the Act. HoneyMax argues that the statute directs the Department to ensure that its decision is based on an analysis of those sales that are “under consideration for the determination of normal value.”

HoneyMax argues the Department did not have reasonable grounds to believe or suspect that the alleged below-cost sales would be used for the determination of normal value because the alleged below-cost sales would not be used for matching third country sales to U.S. sales. HoneyMax states that in the past the Department has found it not “appropriate” to initiate a cost investigation under similar circumstances. See Gray Portland Cement and Clinker from Mexico: Request to Initiate Cost Investigation in the 2001/2002 Review, Department Memorandum (Feb. 3, 2003) (on file in the CRU, room B-099 of the main Commerce building).

Last, HoneyMax argues that the timing of the Department’s decision to initiate a cost investigation prejudiced HoneyMax as the investigation began at the busiest time of year for beekeepers.

Petitioners argue that at the time of a below-cost allegation, all reported comparison market sales are under consideration for the determination of normal value. Petitioners assert that even seemingly non-contemporaneous sales could be compared to the extent that the Department decides that date of sale should be revised from a respondent’s original reporting method.

Petitioners also urge the Department to reject HoneyMax’s prejudice argument and note that both of the companies whose sales were tested for the preliminary results calculations had sales disregarded as a result of the cost test.

Department’s Position: We agree with petitioners. The Department stands by its September 29, 2003 decision to initiate a cost investigation of HoneyMax to determine whether HoneyMax’s sales of honey were made at prices below the cost of production during the period of review. See Memorandum from The Team to Joseph Spetrini, Deputy Assistant Secretary for Import Administration, Group III, Initiation of a Cost Investigation for HoneyMax S.A. (“HoneyMax”) and Rescission of Request for Constructed Value Pursuant to An August 28, 2003 Request from the Department (on file in the CRU, room B-099 of the main Commerce building).

In accordance with section 773(b)(2)(A) of the Act, to initiate a cost of production (“COP”) investigation the Department must have “reasonable grounds” to believe or suspect that sales made in the home market or third country, if appropriate, have been made at prices below the COP. An allegation will be deemed to have provided reasonable evidence if: 1) a reasonable methodology is used in the calculation of the COP, including the use of the respondent’s actual data, if available; 2) using this methodology, sales are shown to be made at prices below the COP; and 3) the sales allegedly made at below cost are representative of a broader range of foreign models which may be used as a basis for normal value. See Import Administration Policy Bulletin, No. 94.1, Cost of Production Standards for Initiation of Inquiry (Mar. 25, 1994) (“Cost Policy Bulletin”).

We did not initiate a cost investigation with respect to HoneyMax’s third country sales in the July 2, 2003 cost initiation memorandum because we did not believe that the third country sales made in the months where there were no U.S. sales would be used for matching purposes. See Memorandum from The Team to Barbara Tillman, Acting Deputy Assistant Secretary for Import Administration, Group III, Petitioner’s Allegation of Sales Below the Cost of Production by Cia

Europeo Americana, S.A., HoneyMax S.A., Nexco, S.A., Seylinco S.A. and TransHoney S.A., p. 7 (on file in the CRU, room B-099 of the main Commerce building). Thus, we did not consider window period sales to be relevant to the cost allegation analysis.

We reviewed the comments from the parties on whether to revisit our decision with regard to the cost allegation for HoneyMax, Nexco, and Seylinco. Upon determining that we may use window period third-country sales for comparison to U.S. sales, we found it reasonable to believe or suspect that the respondent made comparison market sales at below cost prices, based on below-cost POR sales in the months where there were no U.S. sales.

According to the Cost Policy Bulletin: “while the statute requires reasonable grounds to believe or suspect that sales below cost are occurring to initiate an inquiry, it does not require reason to believe or suspect the below cost sales are also substantial in quantity, sold over an extended period of time, and at non-cost recovery prices. These latter determinations can only be made after costs are collected. Therefore, an allegation need not address these factors, and the Department will not consider them in deciding whether to initiate a cost inquiry. However, once a cost investigation is initiated, the COP questionnaire should provide the respondent an opportunity to demonstrate that prices that are below cost at the time of sale will recover all costs in a reasonable period of time. Only the producer has this information, and the Department must provide him with an opportunity to provide it before concluding that prices below cost will not recover all costs in a reasonable time.” Analogous to the Cost Policy Bulletin’s statements that at the cost allegation stage of the proceeding the Department cannot (*i.e.*, it does not have a full cost response) and is not required to conduct a full COP analysis, we found it unnecessary to evaluate claims such as those made by HoneyMax that window period sales probably would not be used as matches in the dumping analysis and therefore are not relevant to the cost allegation analysis. Therefore, we found it appropriate to initiate a cost investigation and include in our analysis all possible comparison market sales which could be used as a basis for normal value.

We also reject HoneyMax’s argument of prejudice because the timing of the cost investigation coincided with the beekeepers’ busy season. HoneyMax submitted five extension requests for more time on behalf of its suppliers to complete the cost questionnaires. The Department granted each of HoneyMax’s beekeepers’ extension requests. We therefore do not believe HoneyMax was prejudiced by the timing of the initiation of the cost investigation.

Comment 14: CEP Profit Ratio

HoneyMax made two arguments concerning the calculation of the CEP profit ratio. First, HoneyMax argues that the Department’s revised CEP calculation, as reflected in HoneyMax’s preliminary sales below cost analysis, has two problems that lead to an unreasonably high profit margin, and therefore an unreasonably high and inaccurate CEP profit deduction. First, the Department’s CEP calculation treats the beekeepers’ profit as HoneyMax’s profit. Second, the Department’s CEP calculation incorrectly treats antidumping and countervailing duties paid by its affiliate to U.S. Customs & Border Protection as profit.

HoneyMax argues that the Department's CEP profit calculation ignores the price HoneyMax pays to the beekeeper, and instead substitutes the beekeeper's cost of production. The difference between the two is the beekeeper's profit, which is not reflected in the Department's CEP calculation. HoneyMax states the department should either add a reasonable amount of beekeeper profit to HoneyMax's cost of goods sold to reflect the amount that HoneyMax paid for the honey that was resold or use the profit margin from HoneyMax's financial statement as the Department did in the preliminary results of review.

Petitioners state that beekeeper costs and expenses are an integral component of normal value and therefore should be considered in determining the profit ratio.

Second, HoneyMax argues that the Department overstates its affiliate's profit because it does not treat its affiliate's antidumping ("AD") and countervailing duty ("CVD") deposits to the U.S. Customs and Border Protection Service as an expense in the CEP profit calculation.

Petitioners do not object to the treatment of duty deposits as expenses so long as such deposits are also included in the numerator used to calculate the U.S.-incurred selling expense ratio (INDIRSU).

Department's Position: Concerning the respondent's first argument, the Department agrees with petitioners, in part. HoneyMax states that while it understands (but does not agree with) the Department's decision to use beekeeper production costs as the basis of COP, HoneyMax suggests the use of acquisition costs to calculate the CEP profit ratio would lead to a more accurate result. We decline to mix and match methodologies.

Section 772(f) of the Act provides three alternative methods for determining total expenses for purposes of computing CEP profit. These alternatives form a hierarchy where the use of any one of the methods depends on the data available to the Department from the case record. The first alternative under section 772(f)(2)(C)(i) reflects the expense data available to the Department when conducting a sales below cost investigation. See Import Administration Policy Bulletin 97.1, Calculation of Profit for Constructed Export Price Transactions (Sept. 4, 1997) ("CEP Profit Policy Bulletin"). In other words, the total profit is calculated on the same basis as the total expenses. See Statement of Administrative Action ("SAA") at 155.

In the preliminary results of review, we utilized HoneyMax's financial statements to determine a CEP profit ratio because the Department had not completed its cost analysis of HoneyMax's beekeepers. Subsequent to the preliminary results, the Department completed its cost analysis of HoneyMax's beekeepers. Accordingly, for the final results of review, the hierarchical nature of the statute directs that we use the beekeeper cost of production to calculate the CEP profit ratio. See CEP Profit Policy Bulletin.

We disagree with respondent's second argument. AD and CVD deposits should not be considered as an expense in the CEP profit calculation. It is the Department's longstanding position that antidumping and countervailing duties are not a cost within the meaning of section 772(d). See Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands: Final Results of Antidumping Duty

Administrative Review, 62 FR 18476, 18485 (Apr. 15, 1997) (“Dutch Cold-Rolled”). Unlike normal duties, which are an assessment against value, antidumping and countervailing duties derive from the margin of dumping or the rate of subsidization found. Logically, antidumping and countervailing duties cannot be part of the very calculation from which they are derived. Id.

Comment 15: Model Match Hierarchy

Nexco requests that the Department collapse color grades A to C into a single physical characteristic in the model match hierarchy because the evidence in the case reveals that color does not affect the price of honey, its cost of production, or its commercial use. Nexco states the Department’s matching criteria between color grades A to C is based on the Pfund scale and treats them as distinct physical characteristics in the hierarchy. Nexco points out that the purpose of the model match is to ensure that significant differences in merchandise are recognized in order to achieve fair comparisons.

Nexco argues that the facts in this review demonstrate that the colors classified as A to C in the Department’s hierarchy are not commercially distinguishable and that the prices to the same customer on the same date do not differentiate between color grades A to C. Nexco believes the color differences between grades A to C do not constitute “meaningful differences in physical characteristics” and as a result they do not need to be captured in the Department’s hierarchy in this case. Nexco cites to Certain Steel Concrete Reinforcing Bars from Turkey, 67 FR 66110, Issues and Decision Memorandum at Comment 1 (Oct. 30, 2002) (“Rebar from Turkey”) in which the Department has consistently found that proper product comparisons capture differences which are meaningful on a commercial level. See also Memorandum from Michael Holton to Edward Yang Re: modification of Model Matching Characteristics for Structural Steel Beams, Case No. A-590-841 (Dec. 16, 2003) (Steel Beams Model Matching Memo). Nexco also cites to Pesquera Mares Australes LTDA. v. United States, 266 F.3d 1372, 1384 (Fed. Cir. 2001) (“Pesquera”) in which the Court upholds the Department’s normal practice to consider merchandise with minor differences in physical characteristics as identical merchandise, as long as the minor differences in physical characteristics are not commercially significant.

Nexco believes the evidence is overwhelming that color does not affect price. Nexco submitted a chart which compares the prices for color grades A to C on every invoice for all exporters subject to this review. Nexco points out that the chart shows that exporters maintained that color was not a factor in pricing. Additionally, Nexco states that other evidence on the record including the sales verifications maintain that color was not a factor in pricing. Moreover, Nexco states that quality control has become of such overwhelming importance that the market has pushed even further away from color preferences. Nexco states that honey, regardless of color grades A to C, is used for identical commercial purposes and the Department in the Analysis Memorandum for Preliminary Results of the Antidumping Review in Honey from Argentina: for TransHoney S.A. (Dec. 30, 2003) recognized that there is no cost difference for different colors of honey when it stated that “because the record contains no information regarding differences in variable costs of manufacturing by color, the DIFMER was set to zero.”

Nexco argues the Department has the discretion to reexamine its model matching hierarchy in the context of an administrative review. Nexco states that reexamination is warranted in this case to achieve a fair comparison. In order to understand the effect this has on the calculation of the dumping margin, Nexco states that it is important to look to the prices in Germany and prices in the U.S. Nexco argues that as long as a U.S. sale of color grades A to C is compared to a foreign market sale of color grades A to C in the same month, there is no dumping margin. But if color grades A to C are treated as distinct products, then the possibilities arise that the Department will have to look to a sale made prior to, or subsequent to, the month of the U.S. sale to find a similar match. Nexco asserts this creates or eliminates an artificial dumping margin by failing to recognize that color grades A to C should not be separate products. Nexco created an exhibit demonstrating that its margin is entirely due to treatment of colors A to C as distinct product characteristics. Nexco states that instead of using the Department's usual methodology where the comparison was made to the first identical sale, if the Department had compared its U.S. sales to any of the German sales within the same month there would be no dumping margin. Nexco points out that the Department's program results in a margin only when a sale made to the United States is compared to a sale in Germany in a much later month because of the honey market price fluctuations.

Nexco argues that it is reasonable to address model match methodology in the context of the review. Nexco states that the results of the original investigation were for the most part based on facts available and that many issues relating to product comparisons did not get a full vetting in the original investigation. In addition, Nexco claims there have been some substantial changes in the products demanded by the markets since the original investigation. Nexco argues that during the review period, honey, particularly sales to Germany but also for other markets, had to meet increasingly stricter tests for trace antibiotics. Nexco further argues that early in the review, complicated issues concerning the inflation adjustments and currency conversions masked the significance of these product comparison issues. Finally, Nexco points out that the verifications provided important factual information for the Department's reconsideration of the issue now.

Petitioners argue the Department should not collapse color grades A to C into a single physical characteristic in the model match hierarchy. Rather, petitioners state that Nexco is wrong on the facts and its proposal is contrary to Department's rules and regulations, as well as long-standing practice. Petitioners believe no changes should be made to the Department's preliminary results with respect to model matching criteria.

Petitioners point out this is the first time in this proceeding that Nexco has raised any objection to the Department's selection of matching criteria for its model matching methodology. Petitioners state that from the outset of this review, it was established that exact grade or color of the honey would be used by the Department as one of the characteristics to define the physical characteristics of the subject merchandise for purposes of making less than fair value comparisons, and no party to the proceeding objected. Petitioners believe that Nexco's belated objection to the Department's matching criteria is nothing more than an attempt to reduce improperly its dumping margin to de minimis levels.

Although Nexco claims that colors classified as A to C in the Department's hierarchy are not "commercially distinguishable," petitioners point out that in Nexco's Section A questionnaire response,

Nexco stated that it “distinguished honey based on color mainly.” Petitioners state that Nexco had no concern with the Department’s use of color codes adopted by the Department in the original investigation and pointed out that Nexco in its response claimed that it measured the honey color through a Pfund grader, “which defines the grade in terms of millimeters.” Moreover, petitioners state that in Nexco’s response the color codes were converted into millimeters “as in the original investigation.” Petitioners state that Nexco even assigned a product control number to each product based on the three physical characteristics designated by the Department. Petitioners further add that Nexco submitted a chart of the Pfund scale and the letter each category in the scale correlates to in its questionnaire response. Petitioners argue that the chart reveals the significance of color or grade in the marketing and selling of the subject merchandise. Petitioners note a 10-fold difference in millimeters between Water White grade A and Light Amber grade C. Petitioners argue that the differences are not commercially meaningless— customers specify honey colors in their orders and Nexco includes the grade or color on its export documentation. Petitioners state that in its response Nexco states that any differences in honey products “ is based exclusively on the grade or color of the honey.”

Petitioners argue that Nexco’s proposal is contrary to law citing to section 771(16) of the Act. Further, petitioners state that according to the Statement of Administrative Action (SAA), the Department must take into account the physical characteristics of products when it creates product categories. Petitioners believe the intent of the statute is to capture all relevant physical differences.

Petitioners argue that the Department’s use of grade or color as a physical characteristic is in accordance with section 351.414(d) because it creates product groups of merchandise that are identical or virtually identical in all physical characteristics. Petitioners state that section 777A(d)(1)(A)(i) of the Act requires that averaging be based on comparable merchandise and the SAA explains that “for purposes of inclusions in a particular average, Commerce will consider factors it deems appropriate, such as physical characteristics of the merchandise.” Petitioners state that Nexco’s proposal is contrary to law because it ignores important physical characteristics. Petitioners state that although Nexco cites to several cases, no case cited stands for the proposition that physical differences should be ignored. Petitioners state the cases deal with minor differences related to the order of physical characteristics or to minor dimensional ranges that had no impact on variable costs.

Petitioners give the example that Nexco cites to Rebar from Turkey for the proposition that the Department has “continually found that proper product comparison capture differences which are meaningful on a commercial level.” Petitioners argue that the decision does not support Nexco’s recommendation that grade or color be disregarded. Instead, petitioners point out the Department merely revised the order of its model matching hierarchy; it did not collapse or eliminate grades or any characteristic from the Department’s model matching hierarchy.

Additionally, petitioners note that Nexco cites to Pesquera in support of its contention that merchandise with minor differences in physical characteristics should be considered identical. Petitioners believe that the facts of that case do not support Nexco in the current review. In Pesquera, petitioners note that the Department collapsed two salmon grades into one because the distinction between the two was found to be commercially non-existent. Petitioners state that in that case there were no uniform international or national grading standards or requirements for salmon. Petitioners

argue that in this review strict national standards exist, and all respondents categorize their honey according to these standards in their normal course of business. Petitioners also note that all respondents subscribe to the industry standard Pfund scale which determines the ultimate grade or color of the honey.

Petitioners state that price averaging must be meaningful since the Department's normal method of comparison in an investigation is weighted-average U.S. price to weighted-average normal value. Given the primary importance of color in the Department's model-matching scheme, petitioners believe that Nexco's proposal to collapse grades A-C into one control number would eliminate distinctions between products and substantially change the price-to-price comparisons made by the model matching program.

Department's Position: We agree with petitioners. During the original investigation, the Department in consultation with all parties established the physical characteristics to be used in the model match hierarchy. In this proceeding, questionnaires were issued in February 2003 based on the same model match hierarchy as in the investigation and all parties fully responded to the questionnaire. No party in this proceeding raised any objection to the Department's selection of matching criteria for the model match methodology either in their questionnaire responses or supplemental responses. Although Nexco argues that reexamining the model match hierarchy is now warranted in this case, such re-examination would be a fundamental change that would affect all parties participating in this proceeding, not just Nexco.

The Department notes the issue of revising the model match methodology has been raised by Nexco for the first time in this review during the briefing stage, whereas in Rebar from Turkey, the respondent raised the issue early in the proceeding, giving all parties ample time to comment. See Certain Steel Concrete Reinforcing Bars from Turkey, 67 FR 66110 (Oct. 30, 2002) and accompanying Issues and Decision Memorandum at Comment 1, n. 5. Furthermore, we note that in Rebar from Turkey this issue was raised well before the preliminary results. Additionally, in Steel Beams Model Matching Memo, we note that the petitioners submitted comments on the model match physical characteristics hierarchy at the very beginning of the review, which allowed the Department time to solicit comments from all parties. See Memorandum from Michael Holton to Edward Yang Re: modification of Model Matching Characteristics for Structural Steel Beams, Case No. A-590-841 (Dec. 16, 2003)

As our practice indicates, the Department prefers to address model match criteria early in a segment of a proceeding so that all parties have an opportunity to comment and address any reporting issues which may result from changes. Early consideration of these issues also allows them to be considered on their own merits, rather than as a result of their impact on any particular respondent's margin calculation. In this case, Nexco has not raised its concerns consistent with these considerations. By raising model match concerns at the briefing stage of a proceeding, Nexco did not allow the Department sufficient time to solicit comments, consider the issue, and make a reasonable determination on the basis of comments from all parties. Also, Nexco's proposed model match change appears to be

results driven for Nexco. Therefore, for purposes of the final results of this review, we will not collapse color grades A to C into a single physical characteristic in the model match hierarchy or revise the model matching methodology.

Seylinco

Comment 16: Sale Diverted From Third Country To The United States

Seylinco argues that the Department should have excluded a sale in the U.S. database made to a customer in another market, part of which was later diverted to the United States. At the time the terms of sale were negotiated, Seylinco did not know that a portion of the quantity sold would enter the United States. Seylinco argues that the shipment was delayed due to testing and Seylinco's customer subsequently requested that part of the shipment be sent to the United States.

Seylinco states that, based on the totality of the circumstances, the sale in question was not structured, priced, or planned as a U.S. sale and therefore the Department should not consider the diverted portion of the sale to be a U.S. sale. Seylinco cites a Department policy notice in support of its position: "where a producer believes the ultimate consumer for its sales is the customer in the home or third country {}, then those sales are not included {as U.S. sales} in the Department's margin analysis. . . ." See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties, 68 FR 23954, 23957 (May 6, 2003). Seylinco supports this proposition with several cases. See Viscose Rayon Staple Fiber From Finland: Final Results of Antidumping Duty Administrative Review, 63 FR 32820, 32824 (June 16, 1998); Titanium Sponge from Russia: Final Results of Antidumping Duty Administrative Review, 61 FR 9676 (Mar. 11, 1996).

Petitioners argue regardless of Seylinco's initial belief, the goods were sold in the United States, with its knowledge and in accordance with all applicable U.S. FDA provisions. As such, petitioners conclude that this sale constitutes a U.S. sale properly subject to analysis by the Department in the review.

Petitioners state there is no statutory provision for disregarding sales of subject merchandise when they are not made in the ordinary course of trade. See Section 772 of the Act; Large Newspaper Print Presses and Components Thereof, Whether Assembled or Unassembled, From Japan, 61 FR 38139, 38151 (Jul. 23, 1996). Petitioners further argue that only in rare circumstances, such as small quantities of sample sales, trial sales, and sales of damaged merchandise has the Department excluded U.S. sales from its analysis. See Coated Groundwood Paper from Finland, 56 FR 56363 (Nov. 4, 1991).

Department's Position. We agree with petitioners. Based on the record evidence of this review, the Department included Seylinco's U.S. sale in question. In general, the Department does not exclude any U.S. sales from its calculation of U.S. price. See Granular Polytetrafluoroethylene Resin from Japan, 58 FR 50343, 50345 (Sept. 27, 1993). There is no statutory provision for disregarding sales of

subject merchandise similar to that for sales of the foreign like product, which may be excluded from analysis when they are not made in the ordinary course of trade. See Section 772 of the Act; see also Large Newspaper Print Presses and Components Thereof, Whether Assembled or Unassembled, From Japan, 61 FR 38139, 38151 (July 23, 1996). Only in rare circumstances, such as small quantities of sample sales, trial sales, and sales of damaged merchandise has the Department excluded U.S. sales from its analysis. See Coated Groundwood Paper from Finland, 56 FR 56363 (Nov. 4, 1991). The sale of honey, at issue here, was a commercial U.S. transaction of substantial size; it was not characterized as a trial sale by Seylinco; and it was not a sale of damaged merchandise. Accordingly, the sale in question was a U.S. sale.

The date of sale is the date on which the exporter or producer establishes the material terms of sale. See 351.401(i) of the Department's regulations. Seylinco has conceded that invoice date is the proper date to establish date of sale for purposes of this review. See Supplemental Questionnaire Response: Honey from Argentina, p. 5 (June 16, 2003) (on file in the CRU, room B-099 of the main Commerce building). At the time the invoice was issued, Seylinco had full knowledge that the honey in question was being diverted to the U.S. market.

Subsequent to the initial sales negotiations, Seylinco's selling agent telephoned Seylinco and requested that Seylinco ship the honey in question to different locations, one of which included the United States. See Memorandum to The File from Brian Sheba, case analyst, through Donna Kinsella, case manager AD/CVD Enforcement Group III/Office 8, Verification of Seylinco, S.A. (Seylinco)'s Questionnaire Responses in the Antidumping Review of the Antidumping Duty Order on Honey From Argentina (Seylinco Verification Report), p. 20 (Nov. 7, 2003) (on file in the CRU, room B-099 of the main Commerce building). Seylinco subsequently issued invoices reflecting the new shipping destinations. Id.; see also Seylinco Verification Report Exhibit 21 (on file in the CRU, room B-099 of the main Commerce building). Therefore, Seylinco had knowledge prior to shipment and at the time the invoice was issued that part of the sale would be diverted to the United States.

Given the above, the sale in question constitutes a U.S. sale and properly included in Seylinco's U.S. sales database.

Comment 17: Classification of Freight Charges

The international freight expenses for one of Seylinco's U.S. sales was inadvertently charged to Seylinco's U.S. customer rather than to Seylinco. As a result, the U.S. customer reversed the charges to Seylinco by means of a deduction from the invoiced price. Seylinco reported this reduction of the invoiced price as a billing adjustment (BILLADJU). For purposes of its SAS programming, the Department classified BILLADJU as a direct selling expense (DIREXPU).

Petitioners argue that the expense was incurred as a movement expense and should be classified as a component of total movement charges, USMOVEU. In the alternative, because the expenses were executed by means of an invoice price adjustment, BILLADJU could also be deducted directly from the gross unit price: $NETPRIU = GRSUPRU - BILLADJU$.

Petitioners argue that treating the freight charges as direct selling expenses is directly contrary to the statutory directive to deduct movement charges from U.S. price. 19 USC 1677a(c)(2). Moreover, petitioners argue that classifying the expense as a direct selling expense rather than a reduction to U.S. price results in an increase to the foreign unit price (FUPDOL) as a circumstances of sale.

Seylinco states that the Department correctly classified the billing adjustment as a direct selling expense rather than an adjustment to the starting price. Seylinco further notes that this is an expense that was generally not classifiable as any other type of expense and should therefore be considered as a direct expense.

Department's Position: The terms of the sale did not require the Seylinco's U.S. customer to pay for freight, but the shipping company incorrectly shipped the honey on a freight collect basis. See Seylinco Verification Report, Exh. 22, pp. 2 and 10. The customer paid the freight charge and this amount from the payment it made on Seylinco's sales invoice. Seylinco booked this transaction as a billing adjustment on its invoice to the U.S. customer. See Seylinco Verification Report, p. 21. Therefore, it is appropriate for these final results to deduct the BILLADJU from the gross unit price. See Memorandum to The File from Brian Sheba, case analyst, through Donna Kinsella, case manager AD/CVD Enforcement Group III/Office 8, Antidumping Duty Review of Antidumping Order on Honey from Argentina: Final Results Analysis for Seylinco S.A. (Seylinco) (May 21, 2004) (on file in the CRU, room B-099 of the main Commerce building) ("Seylinco Final Analysis Memo").

Comment 18: Unreported Bank Charges

The Department noted in its verification report bank charges incurred in connection with a Seylinco invoice pursuant to a U.S. sale, but not reported in Seylinco's sales database. See Seylinco Verification Report at 21. Petitioners argue that since Seylinco did not report bank charges for any of its U.S. sales, the Department should extrapolate as partial adverse facts available the per unit bank charges for this sale across all sales.

Seylinco asserts that the use of adverse facts available to attribute bank charges related to one sale to all U.S. sales is unwarranted and overreaching. Seylinco states that it cooperated fully with the Department's verification and that the Department did not note bank charges for Seylinco's other sales in its verification report.

Department's Position: We agree with petitioners, in part, that bank charges should be applied to all of Seylinco's sales. However, we disagree with petitioners' methodology. We have reviewed Seylinco's verification exhibits to ascertain whether similar bank charges were incurred by Seylinco on other sales. See Memorandum to The File from Brian Sheba, case analyst, through Donna Kinsella, case manager AD/CVD Enforcement Group III/Office 8, Antidumping Duty Review of Antidumping Order on Honey from Argentina: Final Results Analysis for Seylinco S.A. (Seylinco) (May 21, 2004) (on file in the CRU, room B-099 of the main Commerce building) ("Seylinco Final Analysis Memo").

We found the bank charges in each sales trace package to be significantly smaller than the bank charges found for the invoice detailed in Seylinco's verification report. Given the circumstances surrounding the particular sale referenced by petitioners (*i.e.*, the sale was diverted from a third country to the United States, see Comment 16) and the large differential in bank fees between that invoice and Seylinco's other sales invoices, we decline to extrapolate the bank charges associated with that invoice at issue to all of Seylinco's sales invoices. Rather, we will take a simple average of the bank charges for the remaining invoices and apply it on a per unit basis to all sales in the sales database. As to the bank charges for the invoice in question, we calculated the U.S. portion of the bank charges by dividing the quantity of the U.S. sale by the total sales quantity and multiplying the result by the total bank charges. The per unit bank charge may be found by dividing the U.S. apportioned bank charges into the U.S. quantity. See Seylinco Final Analysis Memo.

Other Changes

Comment 19: HoneyMax Billing Adjustment

While the parties did not comment on the Department's classification of HoneyMax's billing adjustment (BILLADJU) as a direct expense (DIREXPU) in the preliminary results of this review, upon review, the Department believes the BILLADJU is more properly classified as a direct adjustment to gross unit price (GRSURPU) rather than a component of DIREXPU. The billing adjustment arose because of a claim by a HoneyMax U.S. customer that it was incorrectly billed on its sales invoice. HoneyMax's affiliate issued a credit invoice to correct the error. See Memorandum to The File from Brian Sheba, case analyst, through Donna Kinsella, case manager AD/CVD Enforcement Group III/Office 8, *Verification of HoneyMax, S.A. Questionnaire Responses in the Antidumping Review of Honey From Argentina*, p. 17 (Nov. 7, 2003) (on file in the CRU, room B-099 of the main Commerce building). Therefore, the BILLADJU is more appropriately classified as an adjustment to gross unit price rather than direct expense and we have made the appropriate change for purposes of these final results of review. See Memorandum to The File from Brian Sheba, case analyst, through Donna Kinsella, case manager AD/CVD Enforcement Group III/Office 8, *Antidumping Duty Review of Antidumping Order on Honey from Argentina: Final Results Analysis for HoneyMax S.A. (HoneyMax)* (May 21, 2004) (on file in the CRU, room B-099 of the main Commerce building).

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the positions set forth above and adjusting all related margin calculations accordingly. If these recommendations are accepted, we will publish the final determination and the final weighted-average dumping margins for all firms in the Federal Register.

AGREE_____

DISAGREE_____

James J. Jochum
Assistant Secretary
for Import Administration

Date