

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

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the 2004-2005 New Shipper
Review of Honey from Argentina (Patagonik S.A.): Final Results
of Antidumping Duty New Shipper Review

Summary

We have analyzed the case and rebuttal briefs of the interested parties in the 2004-2005 new shipper review of the antidumping duty order on honey from Argentina with respect to Patagonik S.A. We have made no adjustments to the margin calculation program and recommend you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues for which we received comment from parties:

- Comment 1. *Bona Fide* nature of the sale
- Comment 2. Billing Adjustment
- Comment 3. Averaging of Beekeeper Costs
- Comment 4. Drum Costs
- Comment 5. Feed Costs
- Comment 6. Rent
- Comment 7. Honey Collector's Salary

Background

On November 24, 2006, we published the preliminary results of the 2004-2005 new shipper review (NSR) of honey from Argentina. See Honey from Argentina: Preliminary Results of New Shipper Review, 71 FR 67850 (November 24, 2006) (Preliminary Results). See also Corrections Honey From Argentina: Preliminary Results of New Shipper Review (Corrections Notice), 71 FR 75614 (December 15, 2006). This review covers one exporter of honey from

Argentina, Patagonik S.A. (Patagonik) and its affiliated supplier Colmenares Santa Rosa S.R.L. (CSR) to the United States during the period of review (POR) of December 1, 2004, to December 31, 2005. The petitioners are the Sioux Honey Association and the American Honey Producers Association. In response to the Department's invitation to comment on the Preliminary Results, petitioners submitted their case brief on January 8, 2007, and respondent (Patagonik) submitted its rebuttal brief on January 16, 2007. On January 31, 2007, the Department extended the final results until April 16, 2007. See Notice of Extension of Time Limit for Final Results of Antidumping Duty New Shipper Review: Honey from Argentina, 72 FR 4486 (January 31, 2007).

Discussion of Issues

Comment 1: *Bona Fide* Nature of the Sale

Petitioners argue the Department's preliminary determination that the single U.S. sale subject to review was a *bona fide* commercial transaction is not supported by the record of this review. Petitioners claim Patagonik's sale does not represent the normal commercial considerations typically reflected either in Patagonik's sales or those of its U.S. customer and importer.

As a preliminary matter, petitioners believe the Department must adjust the U.S. Customs and Border Protection (CBP) data that it relied on for the preliminary results to exclude products that are not natural bulk honey. Petitioners also argue that the Department's analysis of CBP data is flawed because it compared the price of a single sale of honey to entered values for sales of non-honey over a one-year period during which prices fluctuated. Secondly, petitioners assert the Department inappropriately compared the value of bulk natural honey to those of non-honey products, honey of varying colors, processed honey, and honey packaged for retail. Finally, petitioners claim that entry data are not a reliable indicator of sales prices for a given month given the potential for long lags between sale date and entry date. Petitioners believe both the price and quantity of this sale mark it as aberrational when compared to typical commercial transactions involving honey from Argentina.

Petitioners claim the Department cannot use any U.S. sale that is not a *bona fide* commercial transaction as a basis for determining an exporter's own cash deposit rate through a NSR. Citing to the preliminary results and final rescission of the NSR for Wuhan Shino-Food Trade Co., Ltd. (Shino-Food)¹ in the antidumping duty order on honey from China, petitioners assert that application of the Department's analysis and policy statements in this case demonstrate that Patagonik's U.S. sale was not a *bona fide* commercial transaction within the Department's practice and that the Department should rescind this review with respect to Patagonik.

¹See Honey from the People's Republic of China: Intent to Rescind and Preliminary Results of Antidumping Duty New Shipper Reviews, 71 FR 32923, 32924 (June 7, 2006) and Honey from the People's Republic of China: Final Rescission and the Final Results of Antidumping Duty New Shipper Reviews, 71 FR 58579, 58580 (October 4, 2006)

Petitioners assert that when analyzing whether a single U.S. sale is a *bona fide* transaction, the Department analyzes all of the exporter's and U.S. importer's questionnaire responses, as well as certain public information. Furthermore, petitioners state exclusion of a single sale as non *bona fide* necessarily must end the review, citing Tianjin Tiancheng Pharm Co. v. United States, 366 F. Supp. 2d 1246, 1249 (CIT 2005) (Tianjin Tiancheng). Petitioners argue the Department must review the "totality of the circumstances" in determining whether the transaction is "commercially reasonable" or "atypical" citing Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty New Shipper Review, 68 FR 1439, 1440 (January 10, 2003). In this context, petitioners state the Department has observed atypical or non-typical means unrepresentative of a normal business practice.

Petitioners state that the Department considers a number of factors in its *bona fide* analysis, "all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise." Petitioner's brief at 6. Furthermore, petitioners note the Department examines the *bona fide* nature of a sale on a case-by-case basis, and the analysis may vary with the facts surrounding each sale. Id. Petitioners summarize the specific factors used by the Department in its evaluation of the *bona fide* nature of the sales. These are identified as whether the price was reasonable and representative of other sales by the exporter; whether the quantity was indicative of a normal commercial transaction; whether payment terms for international movement and cash duty deposit expenses of the relevant sale are indicative of the exporter's normal commercial transactions; and any other relevant evidence as to whether the sale is *bona fide*. However, petitioners state, the Department, though touching on each of the critical points, did not include in its analysis a complete discussion of all the record evidence materially related to each point. Petitioners assert that a review of all the evidence demonstrates that Patagonik's sale was not *bona fide*.

Petitioners claim that the customs data relied on by the Department are flawed and must be adjusted if they are to be used in the final results. Petitioners assert that the CBP data include entries from two HTS headings which do not cover the type of honey at issue here, namely pure honey packed in bulk form for international sale and shipment. Petitioners argue that the data need to be adjusted to exclude the products under the two HTS numbers that are not at issue in this case.

Turning to average unit values (AUV's), petitioners also note that, according to the importer, Patagonik and the importer negotiated the price for the single U.S. sale "based on the prevailing price for imported honey in the United States at the time of sale." However, petitioners claim the record evidence contradicts this claim and cites the FOB AUVs as well as other evidence on the record of the proceeding; this evidence is proprietary in nature and cannot be further summarized here. See petitioners's brief at 12.

Petitioners contend the Department's analysis of the CBP data is substantially flawed when the Department concluded that (i) the entered value of the subject sale was within the range of all entered values for all honey products reported during the POR and (ii) Patagonik's selling price

was on par with those of other exporters. See petitioners' brief at 9. Petitioners argue the CBP data include a small number of entries with "outlier" prices and petitioners urge the Department to remove from its analysis entries of all products other than bulk natural honey. Also, petitioners maintain it is erroneous for the Department to include in its analysis entries for the entire POR, since the importer has claimed that it and Patagonik based the price of the U.S. sale on the prevailing prices for Argentine honey at the time the sale was made. Therefore, according to the petitioner, the Department must consider the price of entries over a much shorter period than the entire POR, such as the month of the subject transaction's sales date, or the 60/90 day window often used by the Department to select appropriate price comparisons for U.S. and foreign market sales. Petitioners also reference the Department's *bona fide* analysis memorandum, which notes "the per-kilogram price of the product can be affected by many factors, most especially the color." See petitioners' brief at 11. Petitioners assert that the Department has not controlled its analysis of the CBP data for color or for any of the "many factors" that affect price. Finally, petitioners note the declared customs value of a honey shipment at the time it is entered typically represents a price that was agreed to at some set time prior to entry and that it is flawed to assume that the value of the entries in any given month can be connected directly to the commercial considerations for sales negotiated in the same month. According to petitioners, the entered value may reflect market conditions that existed many months prior to entries.

Petitioners argue that to the extent the CBP data are relevant, the argument that Patagonik paid a price "based on the prevailing price for imported honey in the United States at the time of sale," as claimed in the importer questionnaire, is false. See petitioners' brief at 12. Petitioners claim the Department's official monthly import statistics also refute such claims and that the price agreed to by Patagonik and the importer at the time of sale is not indicative of commercial pricing, as represented by average import values.

Petitioners also question the price of Patagonik's single U.S. sale in comparison to certain sales Patagonik made in the third country market.² Further, petitioners also argue that Patagonik's and the importer's explanations for the price of the single U.S. sale are not credible and are contradicted by evidence on the record. Petitioners cite Patagonik's August 28, 2006, response, which states that honey prices in Germany tend to be the lowest in the world because that country has relatively few large and well-established honey importers that have substantial market power over foreign honey suppliers like Patagonik. Petitioners argue that the case record contains no information to suggest that the price of the U.S. sale under review was typical and commercially reasonable.

Finally, petitioners argue that the price paid by the importer to Patagonik reflects non-market factors that make this a non-*bona fide* sale for new shipper review purposes. Petitioners

² Much of this information is proprietary in nature and it cannot be summarized in this memorandum. See petitioner's brief at 15 to 18.

speculate on two possible explanations for this price and conclude that given all the circumstances surrounding the sale and the demonstrated certainty that the importer paid a non-commercial price for the subject honey in the United States, that the Department should determine the sale was not a *bona fide* commercial transaction. See petitioners' brief at 21.

As to quantity, petitioners assert the Department's preliminary determination that the size of Patagonik's sale was not aberrationally low is incorrect. Because the Department based its analysis on CBP data that include products other than honey, petitioners assert, the Department should reexamine such data to exclude non-honey products and certain other transactions. According to petitioners, the Department should therefore not consider the quantity shipped by Patagonik to be a commercially reasonable volume on which to base a new shipper review.

Petitioners argue the U.S. customer for Patagonik's single sale changed its business practices to make this purchase. See petitioners' brief at 23. Petitioners also raise two other issues that are not susceptible to public summary concerning the circumstances of the sale. Looking at the totality of the circumstances of the sale in conjunction with the quantity and price issues raised in earlier parts of its brief, petitioners contend that this sale is an inappropriate basis on which to conduct a new shipper review. Thus, petitioners urge the Department to reverse the preliminary results and find that this is not a *bona fide* sale.

Respondent argues that petitioners have bombarded the Department with a string of assertions attacking the *bona fides* of Patagonik's U.S. sales as well as its German sales. Respondent asserts the Department has subjected Patagonik and its unaffiliated U.S. customer to an exhaustive examination involving numerous questionnaires, supplemental questionnaires, verification and interview of the U.S. customer. Moreover, respondent maintains the Department's retroactive revocation of all new shipper benefits abolishes the justification for such close scrutiny.

Respondent contends the CBP data, even as manipulated by petitioners, support the *bona fides* of Patagonik's sale. Respondent argues the customs price comparison is a red herring and that because of reporting and classification problems, customs data are useful only to the extent that they can confirm general trends. Respondent argues that even petitioners' brief concedes that Patagonik's sale was not the highest priced sale of honey from Argentina and that it was within the range of other sales reported to CBP.

Moreover, respondent claims there is more accurate and specific information on the record which supports Patagonik's pricing of this particular sale to its U.S. customer. Respondent cites to proprietary information on the record, claiming this information shows the same U.S. customer made contemporaneous purchases from other sources at similar prices and that Patagonik's price was well within the normal price range the customer was paying at the same time for the same color honey on the world market. Respondent also refers to Patagonik's contemporaneous sales to other customers which were at similar prices and to the sales verification report where the Department examined the Argentine Ministry of Economy and Production reports for October

and November 2005 and the International Honey Exporters Organization world price reports for September through November 2005 which showed prevailing market prices were in line with Patagonik's sales to its U.S. customer. See Patagonik's case brief at page 6 citing the sales verification report at 13-14.

Respondent rebuts petitioners' argument that Patagonik's U.S. price does not fit within certain price averages that petitioners derive from various sources. Patagonik argues that comparison to average prices over several months is not meaningful because the price of U.S. honey moved sharply upward at the time of Patagonik's U.S. sale. Patagonik argues it made its sale at a time when it could obtain a high price and the market would allow it to sell at a clearly "non-dumped" price. Respondent states it is an "odd spectacle to have petitioners complaining that an exporter was careful not to dump its product." See Patagonik's brief at 7.

Respondent also maintains that in addition to the general rise in prices, the physical characteristics of the product sold to the U.S. customer account for the price premium that Patagonik obtained for its sale. Patagonik states that its U.S. sale consisted of very light honey which makes up a relatively small portion of the Argentine harvest and commands premium prices. Patagonik claims that by September or October, this color honey is extremely rare as the new harvest will not begin until November or December. Patagonik argues since the U.S. customer had an urgent demand for that color at that time, the price for that color from any Argentine supplier was higher than the price of darker, standard grades.

Petitioners, Patagonik claims, make much of the fact that an affiliate of the U.S. customer took delivery in Germany of other honey from Patagonik at lower prices. Respondent argues that because of timing and specification, there is a reason for the difference in prices. Respondent argues the U.S. sale was agreed to and shipped in October, when prices were higher, while the prices to Germany were set earlier in the year. Thus, Patagonik contends, the U.S. price was set when the market was at its high and the German prices were set when the market was near its low. Moreover, Patagonik asserts the German sales were of darker honey, which explains the significant price differential between the U.S. price and the German price. Respondent also claims that because Germany is the largest honey market in the world, exporters must sell in Germany and honey buyers in Germany are thus given considerable price leverage, which lowers the price of honey in the German market. Indeed, Patagonik contends contemporaneous sales were made to other European markets that were considerably higher than the German prices and comparable to the U.S. price.

Respondent also states that the effect of the antidumping order has been to raise prices in the United States, and that no dumping margin has ever been found on any Argentine honey exporter whose U.S. prices were compared to Germany. According to Patagonik, this demonstrates that historically German prices have been lower than U.S. prices. Respondent concludes that the price agreed upon between the U.S. customer and Patagonik was the normal commercial operation of the market.

Respondent states that petitioners have asserted that this was a non *bona fide* sale, designed to “engineer a non-commercial sale to ensure future commercial sales.” See rebuttal brief at 11 citing petitioners brief at 20. The petitioners, in respondent’s view, have alleged price shifting between the U.S. customer and its German affiliates to compensate for the “ supposedly fraudulently high price paid in the United States.” See Patagonik’s brief at 11 citing petitioners’ brief at 21. Respondent states this is an entirely unsubstantiated accusation and can be disproved by examining Patagonik’s German sales file, in which the German importer affiliated with the U.S. customer purchased at prices that were in line with, and even above, other companies’ prices. Thus, Patagonik asserts, there is not a pattern that evidences the petitioners’ price shifting theory.

Patagonik states that at the sales verification, the Department identified specific e-mails in which the German selling prices were negotiated and there was no indication of any conspiracy to suppress prices. See Patagonik’s rebuttal brief at 12, citing sales verification report at 24. Patagonik believes the Department must reject these “outrageous” and “libelous” claims in this proceeding.

Patagonik also claims that it makes no commercial sense to concoct a non-commercial sale as Patagonik needs to be able to sell at prevailing market prices without dumping if it is to benefit from the expense and effort of a new shipper review. Patagonik contends the record indicates that post POR sales prices have risen by more than 21 percent above the price of the sale under review, thus further impeaching petitioners’ allegations.

Patagonik also disputes petitioners’ claims that the quantity sold by Patagonik to its U.S. customer is an unusual, non-commercial quantity. Patagonik contends the Department has determined “single sales, even those involving small quantities, are not inherently commercially unreasonable.” See Patagonik’s rebuttal brief at 15, citing Notice of Final Results of Antidumping Duty New Shipper Review: Certain Welded Carbon Steel Pipe and Tube from Turkey, 71 FR 43444 (August 1, 2006). Patagonik holds that both the Department and the Court of International Trade (CIT) have found “test” transactions involving small quantities to be *bona fide* transactions. Moreover, Patagonik asserts it sold a perfectly normal quantity for honey sales in international commerce. Patagonik cites to its own third-country sales file where 40 percent of its sales were single-container shipments and another 40 percent were two-container shipments, demonstrating that shipments of such quantities are not aberrant. Furthermore, Patagonik points out the Department has conducted other reviews involving similar quantities by other Argentine honey exporters and has established new dumping deposit rates for these exporters based on such shipments.

Patagonik argues that it has continued to sell in the United States at prices higher than during the POR, has continued to participate in the U.S. and other world markets, and that its U.S. customer is a well-established honey trader that will not vanish leaving duties unpaid. Patagonik asserts petitioners’ complaints are an opportunistic attempt to associate Patagonik with other less

scrupulous abusers of the new shipper review system, and that in the case of Patagonik, such allegations are without merit.

Patagonik also argues that since the repeal of the bonding benefit for new shipper reviews, there are no extraordinary benefits of any kind to conducting a new shipper review. The only advantage over an ordinary administrative review, in Patagonik's view, is a slightly more expedited process. Even this advantage, respondent argues, is illusory because of routine extensions of the Department's deadlines. Thus, Patagonik insists, there is no reason for the scrutiny that Patagonik and its U.S. customer have endured, and petitioners' allegations are "all sound and fury, signifying nothing." See Patagonik's rebuttal at 20, citing Macbeth, Act V, Scene V.

In any case, Patagonik maintains the detailed information submitted by Patagonik and its customer fully confirms the *bona fides* of the exporter, the U.S. customer and the transaction concerned. In fact, respondent claims, the Department's in-person meeting with the U.S. customer's general manager and the Department's exhaustive search of every e-mail between Patagonik, its U.S. customer and its parent company clearly demonstrate that Patagonik and the U.S. customer negotiated a legitimate sale in good faith.

Department's position

Based on the record evidence before the Department, and our analysis of the totality of the circumstances, including the activities of the importer, we find that Patagonik's sale to company A was a *bona fide* transaction.

The Department's regulations state that an exporter or producer which has a "sale" and "entry" in the United States may apply for a new shipper review. See 19 CFR 351.214. However, to sustain a new shipper review, the exporter or producer must also show that its sales to the United States during the "new shipper" POR were *bona fide*. See 19 CFR 351.214(b)(2)(iv)(C). See also Fresh Garlic from the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review, 67 FR 11283 (March 13, 2002), and accompanying Issues and Decision Memorandum; and Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty New Shipper Review, and Final Rescission of Antidumping Duty New Shipper Review, 68 FR 1439 (January 10, 2003), and accompanying Issues and Decision Memorandum at comment 1.

In determining whether sales are *bona fide* commercial transactions, the Department examines the totality of the circumstances of the sale in question. If the weight of the evidence indicates that "the transaction has been so artificially structured as to be commercially unreasonable," it is not a *bona fide* commercial transaction and must be excluded. See Certain Cut-to-Length Carbon Steel Plate From Romania: Notice of Rescission of Antidumping Duty Administrative Review, 63 FR 47232, 47234 (September 4, 1998) (Romanian Plate); see also Windmill Int'l Pte., Ltd. v. United States, 193 F. Supp. 2d 1303, 1313 (CIT 2002) (Windmill) (affirming Commerce's application of the commercially reasonable test in Romanian Plate). The CIT has recognized that where a transaction is an orchestrated scheme involving artificially high prices,

the Department may disregard the sale as not resulting from a *bona fide* transaction. See Chang Tieh Industry Co. v. United States, 840 F. Supp. 141, 146 (CIT 1993) (Chang Tieh).

In determining whether a U.S. sale in the context of a new shipper review is a *bona fide* transaction, the Department considers numerous factors, with no single factor being dispositive, in order to assess the totality of the circumstances surrounding the sale in question. See Certain Preserved Mushrooms From the People's Republic of China: Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review, 68 FR 41304 (July 11, 2003) (1998-00 NSR Mushrooms from the PRC) and accompanying Issues and Decision Memorandum at Comment 2.

Consistent with these principles, the Department normally considers factors such as, *inter alia*, the timing of the sale, the sale price and quantity, the expenses arising from the sales transaction, whether the sale was sold to the customer at a loss, and whether the sales transaction between the exporter and importer was executed on an arm's-length basis. See American Silicon Technologies v. United States, 110 F. Supp. 2d 992, 996 (CIT 2000); see also 1998-00 NSR Mushrooms from the PRC and the accompanying Issues and Decision Memorandum at Comment 10. An examination of whether a sale is a *bona fide* transaction may be extensive and may include a variety of these and other factors, depending upon the nature and circumstances of each company and its corresponding sales practices. The weight given to each factor investigated will depend on the circumstances surrounding the sale. See Tianjin Tiancheng, 366 F. Supp. 2d at 1246.

For these final results, we considered all information on the record to determine whether the totality of the circumstances surrounding Patagonik's sale to company A is a *bona fide* transaction, including the price and quantity, the timing of the sale, the sales process and terms of sale and related expenses, the history of the buyer and seller, and the activities and circumstances of the importer of record (*i.e.*, company A).

As discussed below, we conclude that Patagonik's sale to company A was a *bona fide* commercial transaction. We find that the totality of circumstances surrounding this particular transaction demonstrates that the entire transaction was a *bona fide* commercial transaction because it falls within Patagonik's normal business practice and is otherwise commercially reasonable. In reaching this conclusion, we have evaluated several factors, including:

- 1) price and quantity considerations;
- 2) the overall sales processes; and
- 3) the circumstances and legitimacy of the importer.

Price and quantity considerations

The Department has analyzed both petitioners' and respondent's arguments on pricing issues and finds the evidence shows that the price paid to Patagonik by the importer, company A, was an

arms-length price. The totality of the circumstances of the sale leads to the conclusion that in this instance, the sale was a *bona fide* sale and that the review should not be rescinded.

Petitioners have asserted that the customs data analysis carried out by the Department is flawed because the Department compared the price of Patagonik's sale with sales throughout the entire POR, that the use of entry dates means there is a lag between when the honey entered and when the price was negotiated, and that the Department has ignored the color classifications that can affect the price of honey. However, as respondent points out, regardless of reporting and classification problems, customs data are useful to the extent that they can confirm general pricing trends. Other information on the record indicates that the negotiated price reflects a *bona fide* transaction. In particular, as stated in our sales verification report, we examined information from the Argentine Ministry of Economy reports for October and November 2005, and the International Honey Exporters Organization world price reports for September through November 2005, and such information shows "most demand for lighter colors" and prices demonstrating that Patagonik's sales price was in line with prevailing market prices. See sales verification report at 13-14 and Exhibit 8.³

Evidence on the record shows that the price charged by Patagonik to company A reflected the demand for lighter honey at the time the sale was made in the United States and is substantiated by the Department's findings at verification. Patagonik has also provided a credible explanation why its sales to German customers would be at lower prices based on timing and color specification.

The Department finds that Patagonik's sales price of subject merchandise to company A per metric ton (MT) is not aberrationally high. As stated in the Department's preliminary *bona fide* analysis, based on proprietary data from CBP, Patagonik's sales price is comparable to average prices of U.S. sales per MT. See page 2 of the *Bona Fide* Analysis Memorandum. Furthermore, if one sorts the data by color or by using a more contemporaneous period, the average price per metric ton, while lower, is not markedly lower than the price charged by Patagonik to its U.S. customer. Furthermore, Patagonik's sale was not the highest price per MT. See CBP data in Attachment 1 of the *Bona Fide* Analysis Memorandum. We also find credible Patagonik's explanation for its pricing decisions based on the market situation. The evidence on the record does not contradict the arguments made by Patagonik in this review.

Petitioners have also asserted that there was "price shifting" between the U.S. customer and its German affiliate in which a price break was given to the affiliate in Germany to compensate for the high price paid in the United States. See Petitioners' brief at 21. However, the record of the German sales file along with e-mails and other evidence examined at verification show the prices were set in Germany with reference to what the market demanded in Germany and were in line

³ Note this information was originally bracketed in the verification report but was unbracketed in Patagonik's rebuttal brief at 6.

with what Patagonik charged other customers in the German market. See pages 21 and 24 of the sales verification report and the German sales file.

In terms of the quantity at issue, the Department notes single sales, even those involving small quantities, are not inherently considered as commercially unreasonable and do not necessarily involve selling practices atypical of the parties' normal selling practices. See Romanian Plate, 63 FR at 47234. In this case, petitioners have argued the Department should dissect the CBP data even further by eliminating HTS numbers, which though covered by the scope of the order, do not cover the type of honey at issue in this case. However, even sorting the data as requested by petitioners shows a number of entries that were smaller in volume than Patagonik's and that Patagonik's entry is within the range of other entries of similar honey made by other exporters/importers. The Department therefore cannot conclude that the quantity exported by Patagonik is commercially unreasonable.

The overall sales processes

Petitioners have alleged that the U.S. customer for this sale (*i.e.* company A) changed its business practice to make this purchase from Patagonik. However, the record indicates that in fact, a detailed explanation was provided by the unaffiliated U.S. importer's responses to the Department's supplemental questionnaires. The details of this explanation are proprietary in nature but are discussed in the *Bona Fide* Analysis Memorandum at 3. See also Patagonik's June 9, 2006 response at pages 18 to 24. Furthermore, as stated by respondent in its rebuttal brief, the Department's in-person meeting with the U.S. customer's general manager and the Department's exhaustive search of every known e-mail between Patagonik, its U.S. customer and its parent company at verification, indicate that Patagonik and the U.S. customer negotiated a legitimate sale in good faith. We did not find any communications or correspondence to suggest the sale to the U.S. importer was linked to any sale to the parent company in the third country market. Furthermore, there was no indication of any involvement by the parent company in negotiating the U.S. sale. Moreover, the verification report shows that Patagonik had no idea to whom company A sold the product in the United States, and was not involved in the downstream sale in any way. See Sales Verification Report at pages 21 and 29.

The circumstances and legitimacy of the importer

In some cases where the Department has rescinded new shipper reviews, questions have been raised as to the legitimacy of the importer. For example, in Notice of Final Results of Antidumping Duty New Shipper Review: Honey From the People's Republic of China, 69 FR 24128, (May 3, 2004), the Department found there were concerns about the legitimacy of the importer of record for the exporter's second U.S. sale. In particular, in that case the Department found the importer had not been responsive to the Department's importer questionnaires and apparently had provided a false address to the Department and to CBP. In the present case, Patagonik's importer fully cooperated with the Department, and willingly submitted responses to the Department's numerous questionnaires and provided explanations when asked. Furthermore, the importer has a long history of trading honey and other foodstuffs in the United States and

overseas. See Patagonik's June 9, 2006, supplemental response at 18 and Exhibit C-3. See also Response to Importer Supplemental, March 2, 2006, at 2-3. Finally, there is no information on the record questioning the legitimacy of the buyer, seller, or payment and delivery terms for Patagonik's U.S. sale.

Conclusion

Based on the totality of circumstances, the Department determines that Patagonik's sale to company A is a *bona fide* commercial transaction. As noted above, various aspects of this sale indicate that it is typical of Patagonik's business practices. Company A's explanation on the nature of its downstream sale is sufficient, and when taken as a whole, the record evidence indicates that this sale is a *bona fide* sale for the purposes of a new shipper review. Furthermore, the record indicates Patagonik has continued to sell in the United States at prices higher than during the POR, has continued to participate in the U.S. and other world markets, and Patagonik's U.S. customer is a well-established honey trader. See Exhibit C-4 of Patagonik's June 9, 2006 response for Patagonik's post POR sales and Patagonik's explanation at page 29.

As petitioners correctly stated in their case brief "the Department examines the *bona fide* nature of a sale on a case-by-case basis, and the analysis may vary with the facts surrounding each sale." In cases where we have classified sales as non *bona fide* it has been because the sales were atypical in nature and future sales inside and outside the POR were at larger quantities and at lower prices than the sale subject to the new shipper review. In such cases the Department has stated "the comparison of the new shipper sale to subsequent sales, where available, is preferable for a *bona fides* analysis." See Honey from the People's Republic of China: Rescission and Final Results of Antidumping Duty New Shipper Reviews, 71 FR 58579 (October 4, 2006). In this case, respondent notes such information of subsequent sales after the POR is on the record. This information indicates that post POR sales are at prices 21 percent higher than the sale in question and at volumes that are comparable in nature. See Exhibit C-4 of Patagonik's questionnaire response.

Having analyzed the unique facts surrounding this sale, we conclude that the sale was *bona fide*. We therefore recommend not rescinding this review.

Comment 2: Billing Adjustment

Petitioners argue that additional adjustments should be made to Patagonik's export price based on the fact that there may have been an ulterior motive for an adjustment for movement expenses claimed on one of Patagonik's German sales. Referring to proprietary information on the record, petitioners claim the Department should treat the claimed adjustment as a downward adjustment to export price, rather than as an adjustment to normal value.

Respondent challenges petitioners' claims that intra-European transport expenses should be deducted as a rebate against Patagonik's U.S. sales price. Respondent believes this is a baseless

and “ludicrous” suggestion insisting that there is no evidence this adjustment was associated in any way with the U.S. sale.

Department’s Position:

We agree with respondent. The verification report clearly shows that the adjustments to the sale in question in the third country market were linked solely to another sale in the third country market. See Patagonik verification report dated October 30, 2006, at pages 24 to 25. There is no evidence on the record of the proceeding to show that these intra-European transport expenses should be treated as a rebate against Patagonik’s U.S. sales price. Therefore, no adjustment to export price is warranted.

Comment 3: Averaging of Beekeeper Costs

For the preliminary results, the Department calculated Patagonik’s cost of producing honey as a simple average of the selected beekeeper respondents’ costs. However, petitioners argue that because production varied significantly between the selected beekeepers, weight averaging the beekeepers’ costs by their supplied volume of honey would more accurately reflect Patagonik’s experience. Therefore, petitioners assert that for the final results the Department should calculate Patagonik’s cost of producing honey as a weighted average of the beekeeper respondents’ costs.

Patagonik counters that the Department customarily uses a simple average when sample suppliers have been selected for calculating a respondent’s average cost. In support, Patagonik references Honey from Argentina: Final Results of Antidumping Duty Administrative Review, 69 FR 30283 (May 27, 2004) (Honey from Argentina), and accompanying Issues and Decision Memorandum at Comment 10, and Fresh Kiwifruit from New Zealand: Preliminary Results of Antidumping Duty Administrative Review, 61 FR 15922, 15923 (April 10, 1996), where the Department calculated the COP as a simple average of the selected producers.

Patagonik states that in cases where collecting the actual cost of every supplier to the respondent is not feasible, the Department instead selects as cost respondents a limited number of suppliers with the goal of assembling a representative pool of experience. When it comes to combining the costs of these selected suppliers, Patagonik argues that there is no reason to believe that higher volume suppliers are more representative than lower volume suppliers, which Patagonik believes is the assumption of a weighted average methodology. Patagonik concludes that the Department has always used a simple average of beekeepers’ costs in the past and urges the Department to continue to use a simple average for the final results of this review.

Department’s Position:

We agree with Patagonik that the cost of producing honey should be calculated as a simple average of the selected beekeepers’ costs. Patagonik was an exporter of the subject merchandise during the POR, not a producer. Therefore, the Department had to develop a methodology to

calculate a reasonable COP and CV for the subject merchandise. The Department solicited the cost of producing honey from Patagonik's honey suppliers. In accordance with section 777A(c)(2) of the Act, the Department limited its investigation of the suppliers' cost of producing honey due to the voluminous number of beekeepers that supplied Patagonik during the review period. As a result, the Department selected for examination the five largest beekeeper suppliers of honey to Patagonik. See the June 27, 2006, Memorandum to Richard Weible, "Selection of Cost of Production Respondents." The cost data from these five selected beekeeper suppliers were then used to represent the overall cost of production for the respondent Patagonik.

The petitioners argue that the selected beekeepers' costs should be weight averaged by their supplied volume of honey because they experienced significant variations in production and a weighted average would more accurately reflect Patagonik's experience. However, based on the methodology used to select these five supplier respondents, there is no reason to believe that any one supplier is more representative than the others of Patagonik's overall purchasing experience. A weighted average of the five would only yield an average unit cost of the five suppliers weighted toward the largest of the five suppliers, which does not necessarily bear any relationship to the average cost of the honey purchased by Patagonik from all of its suppliers. In fact, such a methodology might even distort Patagonik's cost of producing honey. For example, as indicative in the instant case, assume one of the selected beekeepers accounted for a significant percentage of the total honey supplied by the five selected beekeepers, but only accounted for a small percentage of the exporter's total purchases. In this case, if this beekeeper's costs differ significantly from the other four beekeepers' costs, using a weighted average could create huge distortions in the average cost. Thus, based on the methodology used to select the beekeeper respondents, the Department finds that there is no rational basis to weight the selected respondents. In such case, we relied on the simple average cost of the selected beekeeper respondents.

Furthermore, we note that in the prior reviews of Honey from Argentina, the Department has used a simple average of the selected beekeeper respondents' costs. See Honey from Argentina at Comment 10 where the Department noted that "we calculated a simple average of the remaining four selected HoneyMax beekeepers to represent the cost of production." Therefore, consistent with prior reviews, the Department has continued to use a simple average of the beekeeper respondents' costs for calculating Patagonik's cost of producing honey for the final results.

Comment 4: Drum Costs

For the preliminary results, the petitioners allege that the Department tested some, but not all of the reported drum costs against standard costs. In support, the petitioners point to the preliminary cost calculation memorandum where the Department adjusted Beekeeper 2's reported drum cost to reflect a specific per drum cost. Consequently, the petitioners argue that the drum costs reported by all beekeeper respondents should be tested and adjusted to reflect this same per-drum cost.

Patagonik argues that the petitioners' request amounts to the unnecessary use of facts available when actual verified figures are on the record. Patagonik explains that each beekeeper's total reported drum cost was based on the quantity of honey produced in each month divided by 330 (i.e., the number of kilograms per drum), then multiplied by the average drum cost. According to Patagonik, the average drum costs were reviewed at verification and were based on the actual prices paid by CSR during the cost reporting period.

Thus, Patagonik contends that despite the availability of verified data on the record, the petitioners are urging the Department to instead use the single highest observed price paid for drums during the entire cost reporting period. Patagonik argues that substituting the single highest cost reporting period (CRP) drum price for the actual verified prices represent an adverse facts available inference. As the petitioners provide no rationale for such an inference, Patagonik believes the Department should confirm its preliminary calculation and make no further adjustments to the reported drum costs.

Department's Position:

We disagree with the petitioners that all beekeeper respondents' drum costs should be revised to reflect the single highest per-unit drum cost from the CRP. As noted by the respondent, due to the lack of records maintained by the respondent beekeepers, the reported total drum costs were a derivative of each beekeeper's monthly production quantity, the standard quantity of honey contained in a drum, and the average drum price. We note that the average drum prices were based on the affiliated middleman's records (i.e., sales prices of drums to his beekeeper suppliers) during the CRP and were used for the calculation of drum costs for all beekeeper respondents. We also note that these prices were subject to testing during the beekeeper cost verifications where the Department found no exceptions to the reported market prices for drums during the CRP. As such, we find no rationale for applying the single highest per unit-drum cost to all beekeeper respondents as suggested by the petitioners. Therefore, for these final results, we have made no further revisions to drum costs and have used the reported beekeeper drum costs as adjusted in the preliminary results.

With respect to Beekeeper 2, referenced by the petitioners, we point out that during the cost verification the Department found invoices for actual drum purchases in the beekeeper's records. Therefore, we adjusted Beekeeper 2's reported total drum cost which was based on average market prices during the CRP to reflect the actual average purchase price paid by the beekeeper during the CRP. See Memorandum to the File "Verification of the Cost Response of Beekeeper 2 in the Antidumping New Shipper Review of Honey from Argentina" dated November 16, 2006, at 7.

Comment 5: Feed Costs

For the preliminary results, the Department applied as facts otherwise available the higher of each beekeeper's reported bee feed costs or an imputed feed amount calculated using a standard

per-kilogram bee feed cost from the publicly available 1999 “Gestion Apicola” industry study. Petitioners claim the study assumes a 90 kg per hive yield to calculate its per kilogram feed cost; however, petitioners point out that the beekeeper respondents did not achieve yields of this level during the cost reporting period. Therefore, petitioners argue that in the final results the feed costs from the study should be adjusted to reflect the actual yields experienced by the beekeeper respondents.

Patagonik contends the Department has already substituted the beekeepers’ reported actual feed costs with exaggerated assumptions from the Gestion Apicola study. Thus, Patagonik argues that any further adjustment of this number would be unjustified and punitive. Furthermore, Patagonik points out that, in contrast to petitioners’ claims, the study actually reported widely varying monthly yields over the course of the study period. However, according to Patagonik, petitioners only acknowledge and recommend adjustments based on the highest yield from the study, when other months in the study calculated costs based on yields of half that level.

Additionally, Patagonik asserts that, should the Department decide to apply a yield adjustment, the Department should base the calculation on the per-hive costs from the Gestion Apicola study, rather than attempting to adjust the per-kilogram costs that have already been yielded in the study. In fact, Patagonik argues that calculating the feed costs for the selected beekeepers using the per-hive costs from the study adjusted for inflation and multiplied by each beekeeper’s respective number of hives actually results in a lower cost for four of the five beekeepers than found by the Department using the per kilogram cost. Thus, Patagonik concludes that should the Department decide to adjust feed costs for the beekeepers’ actual yields, the calculation must be based on the per-hive costs from the study.

Department’s Position:

We disagree that the Department’s methodology with regard to bee feed costs should be altered to account for the beekeepers’ actual yield loss experience for the final results. We note that similar to previous reviews, the beekeeper respondents had little or no supporting documentation related to bee feeding consumption rates and costs. Therefore, consistent with prior reviews, the Department used an alternative public source as a benchmark to determine whether bee feed costs were appropriately reported for each beekeeper in the preliminary results.

Petitioners claim the Gestion Apicola study, the public source used as the benchmark, assumes a 90 kilogram yield when calculating the per-kilogram feed cost. However, contrary to their claim, the costs compiled by the study are based on the production experience of sundry Argentine operations with varying numbers of hives and yields. In fact, rather than using a single 90 kilogram per-hive yield, the per-unit costs from the study are derived using per-hive honey yields that range from 45 to 90 kilograms per hive. Thus, the cost figures from the study are representative of the varying experiences of Argentine honey producers. Because we believe the Gestion Apicola figures are representative of Argentine honey producers’ experience, we have not adjusted the methodology employed in the preliminary results for determining the appropriateness of the reported feed costs in these final results.

Furthermore, because we have not chosen to adjust the benchmark costs for producer-specific yields, we have not addressed Patagonik's recommended alternative methodology for calculating a yield adjustment.

Comment 6: Rent

Petitioners argue that in addition to the imputed in-kind land use costs reported by the beekeeper respondents, the Department should allocate the actual cash rent paid by the beekeeper respondents to all farming operations including honey production. Petitioners believe honey and the other non-honey production are actually co-products of the farm. Therefore, according to petitioners, the cash rental expense should be allocated to all operations including honey production.

Patagonik refutes petitioners' contention that the cash rental expenses paid by the beekeepers should be added to the imputed land-use costs that have already been recognized by the beekeeper cost respondents. Further, Patagonik believes only one of the five beekeeper cost respondents falls into the specific situation outlined by petitioners where the beekeeping operations are an incidental part of a larger agricultural operation.

Patagonik contends this beekeeper's land rental pre-dates the beekeeping operation and was for the rental of pasture and facilities used for livestock operations. Furthermore, once the hives were later installed, the terms of the lease did not change as a result of the addition of the hives to the land. In fact, Patagonik contends in its rebuttal brief that the beekeeper cost respondent provided no additional form of compensation to the landholder, either in cash or in kind, for placing the hives on the land. Thus, Patagonik believes the imputed land-use cost of two kilograms per hive more than adequately accounts for the expense of the land used in the respondent's beekeeping operations. Further, Patagonik points out that the in-kind land-use cost assumptions were reviewed by the Department at the cost verifications. Therefore, Patagonik argues that to allocate an additional rental cost on top of the imputed land use costs would be factually incorrect and result in the double-counting of expenses. Hence, for the final results, Patagonik believes the Department should not add additional rental payments to the imputed land-use expense.

Department's Position:

We agree with Patagonik that it is not necessary to allocate additional land use costs to the beekeeping operations for the actual cash land rental payments made by beekeeper respondents. We note that during the honey growing season beekeepers typically arrange for access to lands with heavy floral coverage in order to place their hives near the nectar that is the main ingredient in the production of honey. In their submissions the beekeeper cost respondents asserted that in exchange for access some landowners require a payment of honey (either in the form of actual honey or its cash equivalent) per hive, while other landowners are willing to host the hives with no compensation as they consider the pollination services performed by the bees to be sufficient

benefit. For reporting to the Department, the beekeeper cost respondents calculated their total land-use expense as equivalent to an average cost of two kilograms of honey per hive per annum. This imputed cost represents the rental cost to each beekeeper for placing hives on the property of other landowners.

At verification we investigated the beekeeper cost respondents' claims with regard to their land-use costs. We found no evidence of formal contracts or land-use arrangements. Furthermore, with the exception of finding a higher per hive average CRP land use payment for Beekeeper 2, our findings were consistent with the beekeepers' representations in their submissions with respect to land-use costs. See the November 16, 2006, Memorandum from Heidi K. Schriefer to Neal M. Halper, "Verification of the Cost Response of Beekeeper 2 in the Antidumping New Shipper Review of Honey from Argentina" (CVR Beekeeper 2) at 10-11 and the November 15, 2006 Memorandum from Heidi K. Schriefer to Neal M. Halper, "Verification of the Cost Response of Beekeeper 4 in the Antidumping New Shipper Review of Honey from Argentina" (CVR Beekeeper 4) at 11. Therefore, we continue to rely on the application of the per -kilogram in-kind honey payment as a reasonable approximation of the total honey and cash rental payments relative to the cost respondents' beekeeping operations. Because the imputed costs approximate the beekeepers' land-use cost, whether actually paid in honey or in cash, we agree with Patagonik that the inclusion of the cash land rental costs in addition to the imputed land use costs would result in a duplication of expenses. Hence, the land-use costs have been appropriately calculated in the preliminary results, and consequently, we have made no further adjustments to the land-use costs for these final results.

Regarding Patagonik's claim that Beekeeper 1 incurred no rental payments, either in kind or in cash, for land access, we point out that this statement is in direct contradiction with the information previously placed on the record. In two separate filings with the Department, Patagonik states that in exchange for access to the lands owned by others, Beekeeper 1 pays some landowners a rental payment in kind, while other landowners do not request payment due to the pollination benefit to their crops. See the August 15, 2006, Section D response at 7 and the January 3, 2007, post-preliminary results Section D response at 1.

Comment 7 : Honey Collector's Salary

The petitioners contend the Department should adjust the honey collector's portion of the reported COP to reflect the owner's withdrawal of profits as compensation during the CRP, absent any direct compensation paid. The petitioners recognize that a single family owns CSR (i.e., the company designated as the collector in this review), and that the father and son are the only family members involved in the daily operations of both CSR and Patagonik. See Verification of Colmenares Santa Rosa S.R.L. in the Antidumping New Shipper Review of Honey from Argentina (CSR Cost Verification Report) dated November 21, 2006, at 4. However, the owner of CSR was the only individual not directly compensated for work performed during the CRP. According to petitioners, despite decades of experience and control of a multi-million dollar company, the owner of CSR only reported a nominal salary in the COP calculation. Consequently, the petitioners assert that because the owner withdraws profits from

the company in lieu of receiving direct compensation from CSR, the Department should revise the COP to reflect the actual profits that were verified to be at the owner's disposition rather than using an understated surrogate salary for the honey collector's portion of the COP.

Patagonik finds the petitioners' suggestion of treating the company's entire profits as a salary expense to be without merit because profits are not normally recognized as expenses under any circumstance. Patagonik argues that where an owner performs substantial work for a company but is not formally compensated, the Department imputes a salary based on the standard salary for a similar position in the location or economy at issue. Patagonik attests that a salary itself has no relation to profitability; rather, it is objectively tied to the job description. Patagonik states that the Department fully reviewed the duties and activities performed by the owner of CSR at verification and also increased the reported imputed owner salary in the Preliminary Results based on a full-time managerial position. Patagonik contends this imputed salary fully reflects the appropriate salary expense of the company; thus, there is no justification to treat the company's profits as a component of cost in the final results.

Department Position:

We disagree with petitioners that CSR's profits should be used to value the owner's compensation costs. While the Department noted at verification that the primary owner of CSR withdrew profits in lieu of receiving a formal salary from CSR, for work performed during the CRP, this fact does not compel the Department to classify such profits as actual costs of production. In accordance with our past practice, profit withdrawals do not represent expenses incurred by the respondent that should be included in the reported COP. Rather, these withdrawals are more appropriately considered distributions of earnings or dividends, and thus we have determined, consistent with our practice, that these distributions were properly excluded from CSR's reported costs. (See Notice of Final Determination of Sales at Less than Fair Value: Live Swine from Canada, 70 FR 12181 (March 11, 2005) and accompanying Issues and Decision Memorandum at Comment 67 (Swine from Canada)).

The Department generally finds that salaries reported for owners or family members of a company, whether based on imputed or actual figures, effectively qualify as affiliated party transactions (i.e., transfer prices) and are, thus, subject to the transactions-disregarded rule under section 773(f)(2) of the Act. See e.g., Notice of Final Determinations of Sales at Less Than Fair Value: Certain Durum Wheat and Hard Red Spring Wheat from Canada, 68 FR 52741 (September 5, 2003) at Comment 12 and Swine from Canada at Comment 11. The transaction-disregarded rule specifically states that a transaction between affiliated parties may be disregarded if the amount representing the element of value does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration. If a transaction is disregarded and no other transactions are available for consideration, the statute then directs the Department to determine the value of the transaction based on the information available as to what the amount would have been if the transaction had occurred between persons who are not affiliated.

At verification we learned the owner worked a full-time schedule and assumed nearly all purchasing and managerial responsibilities at CSR, but did not receive a formal salary reflective of the business activities provided. See CSR Cost Verification Report at 16. Because CSR could not rely on actual salary expenses in its normal books and records or comparable market values of the actual services provided by the owner/manager during the CRP, CSR imputed a salary cost based on its internal estimates and the information on the record. Based on our discussions with company officials and evidence provided at verification, we find the imputed salary for the CSR owner/manger applied in the Preliminary Results to be reasonable and reflective of the duties and functions normally associated with a full-time management position at CSR.

Agree _____ Disagree _____

David M. Spooner
Assistant Secretary
for Import Administration

Date