

DATE: November 23, 2007

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 Final Results of
Antidumping Duty New Shipper Review of Honey from the
People's Republic of China

SUMMARY

We have analyzed the case and rebuttal briefs of interested parties in the new shipper review (“NSR”) of the antidumping duty order on honey from the People’s Republic of China (“PRC”). The period of review (“POR”) is December 1, 2005, through June 30, 2006. On July 3, the Department published the preliminary results of the new shipper review for Shanghai Bloom International Trading Co., Ltd (“Shanghai Bloom”). See Honey from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review, 72 FR 36422 (July 3, 2007) (“Preliminary Results”). We recommend that you approve the positions described in the “Discussion of the Issues” section of this Issues and Decision Memorandum. Below is a complete list of issues for which we have received comments:

Comments:

Comment 1: Application of Adverse Facts Available

- A. Completeness
- B. Factors of Production
- C. Importer’s Cooperation

Discussion of Issues:

Comment 1: Application of Adverse Facts Available

Shanghai Bloom argues that the Department’s application of adverse facts available in the preliminary results was arbitrary, a misuse of discretion, unsupported by evidence on the record, and not in accordance with law. Shanghai Bloom cites section 776(b) of the Tariff Act of 1930,

as amended (“the Act”), where the Department is permitted to use adverse facts available when a respondent has not cooperated to the best of its ability. Shanghai Bloom also cites Nippon Steel Corporation v. United States, 337 F.3d 1373, 1382 (2003) (“Nippon Steel”) and Mannesmannrohren-Werke Ag v. United States, 77 F.Supp.2d 1302 (CIT 1999) (“Mannesmannrohren-Werke”), which set forth when a party is “acting to the best of its ability.” Shanghai Bloom argues that it, along with its supplier, cooperated with the Department and acted to the best of its ability, and therefore the Department’s application of adverse facts available should be reversed for the final results.

The American Honey Producers Association and the Sioux Honey Association (“petitioners”) respond that the application of AFA is warranted when an interested party fails to cooperate to the best of its ability, pursuant to section 776(b) of the Act. In addition, Petitioners cite Shanghai Taoen Int’l Trading Co. v. United States, 360 F. Supp 2d. 1339, 1345 (CIT 2005), where the Court found that withholding information or providing misleading information is grounds for the application of AFA under section 776(a) of the Act. Petitioners argue that Shanghai Bloom is wrong in saying that it cooperated to the best of its ability to respond to the Department’s requests for information by putting forth “maximum effort.” Petitioners also cite to Nippon Steel, 337 F.3d at 1381, and assert that Shanghai Bloom provided the Department with as little information as possible concerning its commercial operations. Petitioners also argue that when the Department is unable to verify the cost responses of a respondent because it failed to provide complete, accurate, and verifiable data, the Department may apply AFA. See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China, 71 FR 16116 (March 22, 2006) and accompanying Issues and Decision Memorandum at Comment 11.

A. Completeness

Shanghai Bloom argues that the Department was incorrect in finding that Shanghai Bloom had impeded the Department’s verification by deleting emails from two of its email accounts that the Department had asked to view. Shanghai Bloom argues that at verification, the general manager explained that his daughter had asked him to try her newly opened email account, which he had an employee use to file the company’s FDA registration. Shanghai Bloom argues that this was the only time Shanghai Bloom used this particular email address, and that it was used for the general manager’s daughter’s private email communication thereafter. Shanghai Bloom asserts that the daughter’s initial refusal, and then ultimate disclosure of her password after deleting her personal emails, might have slowed the Department at verification, but Shanghai Bloom argues that it acted to the best of its ability because it eventually allowed the Department access to the account. Shanghai Bloom contends that the general manager’s daughter is not a party to the proceeding, and therefore, Shanghai Bloom should not be held accountable for the daughter’s actions.

Regarding the official business email account of Shanghai Bloom, Shanghai Bloom argues that it had limited storage in this email account, and it was necessary for the company to routinely

delete its emails in order to receive new messages. Shanghai Bloom argues that it did its best to save copies of the sales correspondence in text format, and it believed that was sufficient for the Department's purposes in demonstrating how the company conducted its sales. Shanghai Bloom states that because it did not save the original electronic emails, this is not an indication that it did not act to the best of its ability.

Petitioners argue that deleting all information from the daughter's email account did not merely slow verification, as Shanghai Bloom asserts, but impeded the Department's ability to verify whether this email account was used to conduct official business. Petitioners contend that deleting information after the Department requested access constitutes the deliberate withholding of information, which could have been relevant to the Department's bona fides analysis, and warrants the application of AFA, pursuant to sections 776(a)(2)(A), (C), and (D) of the Act. Petitioners also point out that the daughter's email address was used to register Shanghai Bloom with the FDA, after Shanghai Bloom's official email account had already been opened and was used for sales negotiations. Petitioners argue that Shanghai Bloom did not offer an explanation as to why using the daughter's email account was "more convenient," and believes that there is no reason for Shanghai Bloom to have used this account other than to prevent the Department from discovering information relevant to the new shipper review, such as possible communication with Shanghai Bloom's producer, customer, or importer.

Petitioners also argue that the Department regularly safeguards private information it encounters at verification, and assert that the general manager would not have allowed his daughter to delete everything from the account if there was nothing to hide after the Department had requested access to view the account. Petitioners cite Nippon Steel Corp. v. United States, 337 F.3d. 1373, 1381 (Fed. Cir. 2003), and state that the daughter's decision to delete the emails is irrelevant to the application of AFA, and the only question is whether Shanghai Bloom was able to comply with the Department's request for information. Petitioners refute Shanghai Bloom's claim that Mr. Zhu's daughter is not a party to the proceeding, since the daughter's email account was used for official business. Moreover, Petitioners claim that Mr. Zhu and his daughter are affiliated pursuant to section 771(33)(A) of the Act, and Mr. Zhu, his daughter, and Shanghai Bloom are affiliated pursuant to section 771(33)(F) of the Act. Therefore, Petitioners argue, the daughter's email account is subject to the Department's scrutiny in this new shipper review.

Regarding Shanghai Bloom's official email account, Petitioners argue that the Department was unable to confirm at verification Shanghai Bloom's claim that its email account had space limitations. In addition, Petitioners argue that there is no way to confirm that the text files saved of the sales negotiation emails actually represent the communication between Shanghai Bloom and its U.S. customer, and these text files were created solely to respond to the Department's requests for information. Thus, by deleting information from both Shanghai Bloom's official account and the account used to register with the FDA, Petitioners argue that the Department should apply AFA pursuant to sections 776(a)(2)(A), (C), and (D) of the Act.

Shanghai Bloom disagrees with the Department's finding that it was a discrepancy that Shanghai

Bloom's employee was not familiar with the FDA website, which the Department stated "call{ed} into question the veracity of record information submitted by the respondent given that the respondent indicated that it was she who had initially registered the company." See Memorandum to James C. Doyle, Director, AD/CVD Operations, Office 9, Import Administration from Erin Begnal, Senior International Trade Analyst, AD/CVD Operations, Office 9, Import Administration, regarding Honey from the People's Republic of China: Preliminary Application of Adverse Facts Available to Shanghai Bloom International Trading Co., Ltd. (June 26, 2007) ("AFA Memo") at 7. Shanghai Bloom argues that Ms. Zhang, the sales manager who initially filled out the FDA registration, had limited English capability, had accessed the FDA website only once, and had filled out the FDA registration nine months prior to verification. Shanghai Bloom asserts that it is unreasonable for the Department to expect, under these circumstances, for Ms. Zhang to access the FDA website with familiarity.

In addition, Shanghai Bloom disagrees with the Department's finding that Shanghai Bloom and its supplier made conflicting statements regarding who maintained the password to enter the supplier's on-line FDA registration information. Specifically, Shanghai Bloom states that Ms. Zhang indicated that the supplier had completed its own on-line registration with the FDA and that she did not have access to this on-line information. Shanghai Bloom also states that at the verification of the supplier, the supplier indicated that it had given Ms. Zhang the supplier's FDA registration password. Shanghai Bloom argues that Ms. Zhang is responsible for all sales and managerial duties, and that because the FDA registration of its supplier was successful, there would have been no reason for her to remember the details of a phone call with the supplier that took place months prior in which the supplier had given her the password to the supplier's on-line FDA registration information. Shanghai Bloom asserts that it would be unfair of the Department to conclude that Ms. Zhang failed to cooperate to the best of her ability for forgetting this information.

In rebuttal, Petitioners argue that it was not simply a language issue, as Shanghai Bloom characterizes, as the reason why Ms. Zhang was unable to maneuver the FDA website. Petitioners point out that when first asked, Ms. Zhang incorrectly stated that a company was not able to access its registration after initial creation, which the Department noted at verification was untrue, pointing to Shanghai Bloom's submitted FDA registration form corrected in its August 10, 2006, supplemental questionnaire response.

Petitioners also point out Shanghai Bloom's conflicting information with regard to its supplier's FDA registration. Specifically, Petitioners assert, Ms. Zhang stated at Shanghai Bloom's verification that she could not access Shanghai Bloom's supplier's FDA registration. Petitioners note that, after the Department found a copy in her files, Ms. Zhang claimed that it had been faxed to her from the supplier, Linxiang Jindeya Beekeeping Co., Ltd. ("Linxiang Jindeya"). However, that copy contained no evidence that it was a faxed transmission from Linxiang Jindeya as Ms. Zhang indicated upon discovery of the document. Subsequently at the verification of Linxiang Jindeya, Petitioners argue, the Department found that a copy of the supplier's FDA registration had been faxed to Linxiang Jindeya from Shanghai Bloom a day

prior to the supplier's verification (which was after Shanghai Bloom's verification). Additionally, Petitioners state that the Department found at verification that Ms. Wang, for Linxiang Jindeya, emailed a copy of its FDA registration and the password to the FDA site to Ms. Zhang at Shanghai Bloom when it was created, which conflicted with Shanghai Bloom's statement that it did not have access to its supplier's FDA registration. Petitioners argue that these discrepancies at verification demonstrate a willful decision by Shanghai Bloom to withhold information from the Department, which precluded the Department from being able to verify the accuracy of the entry documents and information establishing the identity of the producer of the honey that Shanghai Bloom exported to the United States. Therefore, Petitioners conclude, the Department properly applied AFA pursuant to sections 776(a)(2)(A), (C), and (D) of the Act.

Additionally, Shanghai Bloom refutes the Department's finding that it could not verify where Shanghai Bloom was located during the POR, stating that this was not supported by record evidence. Shanghai Bloom argues that in its January 30, 2007, supplemental questionnaire response, it provided a copy of Shanghai Bloom's lease agreement which indicated that its lease at Room 508, Weifang Road expired on January 3, 2007. Shanghai Bloom states that the company moved to a new location subsequent to that time, which is where the Department's verification was held. Although the general manager indicated that it might take up to four hours to go and return to the former location, and mindful of the fact that the Department was flying out of Shanghai later that day, Shanghai Bloom argues that the general manager never refused the Department's request to visit the former office location and in fact, arranged for the Department's transportation. Shanghai Bloom states that because traffic was unusually light, the verification team arrived at the former office location in a half hour, and spoke with the foreman at the former office location, which was then a construction site. Shanghai Bloom argues that the foreman told the verifiers that construction had begun the previous March, and that the Department noted this information, which contradicts the Department's statement in its AFA Memo that there was no one on site who could confirm when construction had begun. Thus, Shanghai Bloom contends, the Department verified the street number of the old office location and the month in which construction began at the site.

Petitioners argue that if Shanghai Bloom had nothing to hide, it would not have gone to such lengths to prevent the verification of its prior office location. In addition, Petitioners argue that there is no evidence on the record to support Shanghai Bloom's claim that the construction foreman told the verifiers that construction had begun in March or that the verifier made a note of this information in a notebook. Petitioners contend that this, taken with the other discrepancies mentioned above, indicates that Shanghai Bloom further impeded the Department's investigation.

B. Factors of Production

Shanghai Bloom argues that in the Department's AFA Memo, the Department incorrectly claimed that Shanghai Bloom's supplier made false statements that it did not produce queen bees during the period of review ("POR"). Shanghai Bloom states that the Department came to this

conclusion due to its supplier, Linxiang Jindeya, telling the Department at verification that the bee farm produced queen bees during 2006, due to the verification team finding evidence of queen bee production on the bee hives (*i.e.*, playing cards representing new queens), and due to the fact that the general manager could not provide specific dates in 2006 when queen bees were produced. Shanghai Bloom argues that, in its supplemental questionnaire, it correctly responded to the Department's question regarding reproduction of queen bees by answering that it did not produce queen bees during the POR (December 1, 2005, through June 30, 2006). However, Shanghai Bloom asserts that at verification, the question was not whether the supplier produced queen bees during the POR, but rather whether the supplier bred queen bees in the year 2006.

Shanghai Bloom claims that its supplier did reproduce queen bees in late 2006, after the POR, and although it presented the Department with records showing there was no queen bee reproduction in July 2006, the supplier was unable to show records from the later months of 2006 when queen bees were bred because "the verifier walked away."¹ In addition, Shanghai Bloom argues that the evidence of queen bee production found on the bee hives (*i.e.*, the playing cards) does not conflict with information on the record, because the timing of the evidence found at verification occurred outside of the POR. Moreover, Shanghai Bloom asserts that when Mr. Jin, the general manager of Linxiang Jindeya, was asked about the dates in which queen bees were reproduced, Mr. Jin stated that the information was kept in the bee farm journals, and that he could not be expected to speak from memory about the exact dates in which the beekeepers recorded new queens. In sum, Shanghai Bloom argues that the Department's allegation of conflicting statements regarding queen bee reproduction is not supported by evidence on the record.

Petitioners point out that at verification, Shanghai Bloom's supplier, Linxiang Jindeya, made conflicting statements about whether it reproduced queen bees. First, Petitioners argue, Mr. Jin, the general manager, stated that the company makes sure there is only one queen in each hive, and if there are two, they will kill it, signifying that Linxiang Jindeya had no queen bee reproduction. Contrasting that statement, Petitioners argue, the Department found playing cards on the hives, which indicated the hives in which Linxiang Jindeya was breeding new queens. Petitioners also refute Shanghai Bloom's argument that it correctly answered the Department's question about POR queen bee reproduction by stating that there was production of queen bees in 2006, though not during the POR. Petitioners state that the Department did not ask Linxiang Jindeya if queen bees were produced during 2006, but rather, this is what Mr. Wen, the beekeeper, explained when asked about the significance of the playing cards on the hives - that Linxiang Jindeya bred queens during 2006.

Petitioners contend that queen bees must be bred early in the year in order to establish healthy hives during honey production season. They argue that it is reasonable to believe that if there was queen bee production during 2006, as Mr. Wen indicated, and the Department saw evidence of queen bee reproduction during the beginning of 2007, that Linxiang Jindeya also bred queens

¹See Shanghai Bloom's case brief at 8.

at the beginning of 2006, which coincides with the POR. Petitioners argue that Shanghai Bloom did not provide evidence to the Department demonstrating that it did not breed queen bees during the POR, although it claimed to have beekeeping records where this information was noted. Petitioners cite China Steel Corp. v. United States, 306 F. Supp. 2d 1291, 1306 (CIT 2004), stating that it is the burden of Shanghai Bloom to prepare a complete and accurate record of information, and Linxiang Jindeya should have provided more information to support its story regarding queen bee reproduction at verification. Petitioners argue that Shanghai Bloom's statement that the verifiers walked away when presented with the beekeeping log is new factual information, which was not included as part of the verification report, and therefore should not be relied upon by the Department for the final results. Moreover, Petitioners argue, Linxiang Jindeya did not assert at verification that queen bee reproduction occurred during the latter part of 2006 (subsequent to the POR), and doing so in the case brief is not supported by record evidence. Pursuant to sections 776(a)(2)(A), (C), and (D) of the Act, Petitioners believe that AFA is warranted because Shanghai Bloom and Linxiang Jindeya impeded the Department's investigation by withholding information and provided unverifiable FOP information with respect to the reproduction of queen bees.

Shanghai Bloom disputes the Department's claim in the AFA Memo that Linxiang Jindeya failed to report the consumption of water in the beekeeping stage. Shanghai Bloom argues that its supplier did not report water because it was drawn from a well, free of charge, the cost was reflected in the beekeepers' labor cost, and because the consumption of water was de minimis. Shanghai Bloom states that the verifiers were shown the well from which the water was drawn, were given the dilution rate for sugar by the supplier, and were shown the dilution rate for pesticide from the panel of the pesticide box. Shanghai Bloom asserts that the Department has in its possession the information it would need to calculate the supplier's water consumption, and that it would be a small amount nonetheless. Shanghai Bloom cites Mannesmannrohren-Werke, 77 F.Supp.2d 1302, 1321 (1999) : “{i}n determining whether a party has acted to the best of its ability for purpose of 19 U.S.C. §1677(b)(1994), Commerce, like this Court, must interpret this provision in light of the principle that the law does not care for, or concern itself with, small or trifling errors,” and states that even if the supplier failed to report water at the beekeeping stage, it should not be considered a factor in determining whether Shanghai Bloom has acted to the best of its ability.

Petitioners cite Pacific Giant, Inc. v. United States, 26 CIT 223 F. Supp 2d 1336 (2002) (“Pacific Giant”), and state that just because Shanghai Bloom acquired the water it consumed for free, Shanghai Bloom is still required to report its water consumption to the Department. In Pacific Giant, Petitioners argue, section 773(c)(3) of the Act contemplated the calculation of normal value based on the consumption quantity of inputs, rather than the costs associated with the inputs. Pacific Giant, 26 CIT at 904-905, 223 F. Supp. 2d at 1346. In addition, in Pacific Giant, the Court stated that water should be reported as a factor of production, when it is used for “more than incidental purposes.” Petitioners assert that because water is used to dilute two main factors of production, sugar and pesticide, it is used for “more than incidental purposes.”

In response to Shanghai Bloom's argument that the Department has in its possession the information it needs to calculate water consumption for pesticide and sugar, Petitioners argue that the burden of preparing a complete and accurate record is the responsibility of Shanghai Bloom and its supplier, and not that of the Department to construct on its own. Moreover, Petitioners contend that the ratio of water to sugar presented to the Department at verification by Mr. Wen, at Shanghai Bloom's supplier, was never substantiated by the company's records, and the water to pesticide ratio contained on the pesticide box is an insufficient basis upon which to determine how much water Shanghai Bloom's supplier actually used to dilute the pesticide. Additionally, Petitioners disagree with Shanghai Bloom's characterization of water consumption as "trifling," because the Department was unable to verify the actual dilution ratios of sugar and pesticide due to a lack of substantial record evidence. Petitioners refute Shanghai Bloom's reliance on Mannesmannrohren-Werke by saying that water is a "small or trifling error," because the Department did not only solely rely on water consumption in basing its decision to apply adverse facts available. Petitioners maintain that water consumption was one of several factors of production that the Department was unable to verify, and the Department should continue to apply AFA.

Shanghai Bloom argues that the Department erred in claiming that it was unable to verify certain other beekeeping factors of production. Specifically, Shanghai Bloom asserts that it is impossible to count the number of live bees in a hive, and that its supplier provided the Department with information from a scientific publication and a sample digital photograph to substantiate its reported number of bees. Shanghai Bloom argues that the supplier estimated the number of bees it had at 2,500 per comb, based on the scientific book information it put on the record, which states that as long as the number of bees appears to evenly cover the surface of the comb, the number of bees is around 2,500. Shanghai Bloom argues that it is unrealistic and an abuse of the Department's discretion at verification to demand that the beekeepers prove that each of the beekeepers' combs had exactly 2,500 bees.

Shanghai Bloom also disputes the Department's claim that it was unable to verify the amount of raw honey produced by the supplier because some honey was left in the hives to feed the bees. Shanghai Bloom asserts that in the honey industry, honey production means the weight of the honey extracted from the combs by the beekeepers. In addition, Shanghai Bloom contends that nowhere in the world do beekeepers weigh the honey left in the combs for the bees to consume, nor is there information on the record indicating otherwise, and the Department should not expect Shanghai Bloom to have done so.

Shanghai Bloom believes that the Department incorrectly found that Shanghai Bloom's supplier failed to report the bags it used to pack the byproducts it sold during the POR. Because Shanghai Bloom's supplier stated at verification that the byproducts were packed in re-used sugar bags, Shanghai Bloom asserts that it is the Department's practice not to consider recycled materials as factors of production, which is why they were not reported in the FOP database.

Finally, Shanghai Bloom argues that it was unfair for the Department to claim that it was unable to verify the beekeepers' salaries because the beekeepers did not have bank accounts. Shanghai Bloom argues that it supplied the Department with complete accounting records and payroll sheets for the payment of its beekeepers, which has been accepted by the Department in previous reviews. Shanghai Bloom argues that beekeeping in China is a primitive practice, and it is reasonable to expect that beekeepers would not maintain bank accounts due to the "economic, social, and cultural realities of the beekeepers' lifestyles."

Petitioners dispute Shanghai Bloom's claim that the Department demanded that Shanghai Bloom prove that each comb had exactly 2,500 bees. Petitioners argue that the real problem was that Shanghai Bloom was contradictory in explaining how it estimated the number of bees in its questionnaire responses and at verification. Petitioners state that in its questionnaire responses, Shanghai Bloom and its supplier state that they relied on a scientific publication to report the number of bees per comb. However, at verification, Shanghai Bloom and its supplier stated they relied on photographs taken on a regular basis to estimate the bee count. In addition to this contradiction, Petitioners state that when the photograph presented to the Department appeared not to support Shanghai Bloom's estimated bee count, the general manager of the supplier then changed his statement, and claimed that the bee count was based on a "standard figure." Moreover, Petitioners argue, Shanghai Bloom's supplier could only provide the Department with one photograph, which was inaccurate in demonstrating that there were 2,500 bees on the comb, although the supplier claimed that these photographs were taken on a regular basis. Additionally, Petitioners argue that the "scientific" publication was not fully translated and dated June 1999, many years prior to the POR. Petitioners argue that a respondent must tell a consistent story and maintain sufficient records to corroborate its story, or the Department can, when faced with conflicting evidence, apply AFA, consistent with section 776(a)(2)(D) of the Act.

Petitioners also disagree with Shanghai Bloom's argument that the Department should not have applied AFA for not being able to verify total honey production. Petitioners argue that respondent submitted new information on the record by stating that in the honey industry it is common practice for beekeepers to leave a portion of the honey in the hive to feed the bees, and that "honey production" means the weight of honey the beekeepers extract from the combs. Regardless of this assertion made by Shanghai Bloom, Petitioners point out that Shanghai Bloom omitted information from its questionnaire responses because, in addition to sugar and water, honey should have been reported as an FOP for feeding the bees. In addition, Petitioners disagree with Shanghai Bloom's assertion that there is no practical way to weigh the honey left in the beehives by stating that beekeepers must estimate how much honey to keep in the hive to know how much sugar is needed to feed the bees during the winter in order to keep the bees from starving. Petitioners argue that the Department correctly concluded that it could not verify total honey production because honey was not reported as an FOP for bee feed, and therefore AFA is warranted under section 776(a)(2)(D) of the Act.

Regarding the use of packing materials for sales of by-products, Petitioners argue that Shanghai Bloom does not point to any case precedent in making its claim that recycled materials are not

considered FOPs. Petitioners again cite Pacific Giant, and state that section 773(c)(3) of the Act contemplated the calculation of normal value based on the consumption quantity of inputs, rather than the costs associated with the inputs. Pacific Giant, 26 CIT at 904-905, 223 F. Supp. 2d at 1346. Hence, Petitioners argue, the Department was correct in applying AFA to Shanghai Bloom and its supplier for not having reported consumption of the byproduct packing materials in the FOP database. Due to Shanghai Bloom's numerous FOP discrepancies, Petitioners argue that the application of AFA is warranted when a respondent deliberately fails to provide complete, accurate, and verifiable data, citing among others, Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Prestressed Concrete Steel Wire Strand from Mexico, 68 FR 68350, 68350-68351.

C. Importer's Cooperation

Shanghai Bloom argues that the Department's assertion that Shanghai Bloom did not cooperate to the best of its ability because its importer did not provide complete and accurate information is arbitrary and not based on meaningful information. Shanghai Bloom asserts that it is its importer's company policy not to disclose the details of all of its purchases, and so it provided the Department with average price and total quantity of POR purchases. Shanghai Bloom argues that the Department could obtain the information it needed to make price comparisons from U.S. Customs and Border Protection ("CBP"), which the Department typically does during the course of a proceeding. Shanghai Bloom contends that the Department cannot hold a respondent accountable for the actions of its importer. Moreover, Shanghai Bloom states that the Department cannot find that a respondent did not act to the best of its ability if its importer, a voluntary provider of information, fails to provide the Department with required information.

Additionally, Shanghai Bloom maintains that its importer misunderstood the Department's question by answering that it had not purchased honey from any other PRC exporters during the POR, and that the CBP information put on the record by the Department shows that the importer was not concealing information by answering in the manner in which it did. Shanghai Bloom stresses that it acted to the best of its ability to get its importer to comply with the Department's requests for information, information that the Department obtained on its own for use in a bona fides analysis.

Petitioners argue that the Department properly applied AFA because Shanghai Bloom's importer failed to provide complete and accurate information regarding its other imports of honey from China. Petitioners state that it is the Department's decision which information is relevant to its investigation, not Shanghai Bloom's importer's, which claimed that it would not provide all information requested by the Department due to its corporate policy. Petitioners also disagree with Shanghai Bloom's characterization of its importer's misunderstanding of the Department's questions. Petitioners argue that the Department's question, in which it requested information on Shanghai Bloom's importer's other purchases of Chinese honey during the POR to compare to Shanghai Bloom's sale, was clear in meaning from its wording and from its context. Moreover, Petitioners argue, although the Department did obtain price and quantity data of Shanghai

Bloom's importer's other purchases of PRC honey from CBP directly, this does not change the fact that the importer impeded the Department's investigation. Petitioners contend that it is Shanghai Bloom's responsibility to prepare a complete and accurate record, not the Department's, citing China Steel Corp. v. United States, 306 F. Supp. 2d at 1306.

Petitioners also disagree with Shanghai Bloom's assertion that it cannot be held responsible for the actions of its unaffiliated importer. Petitioners state that section 782(d) of the Act permits the Department to disregard the importer's information if it does not meet the requirements of section 782(e) of the Act. In addition, Petitioners argue that if an interested party (an importer) does not act to the best of its ability to provide information, the Department, pursuant to sections 782(d) and (e) of the Act can disregard all information provided by that interested party (the importer), and thus apply AFA. Petitioners argue that Shanghai Bloom's importer cannot pick and choose which information it provides to the Department in the context of a new shipper review, and the Department has the ability to administer the antidumping law in such a way that prevents the evasion of dumping orders, citing to Tung Mung Dev. Co. v. United States, 219 F. Supp. 2d 1333, 1343 (CIT 2002), aff'd 354 F.3d 1371 (Fed. Cir. 2004). Therefore, Petitioners contend, the Department properly applied AFA under section 776(a)(2) of the Act due to the importer's failure to cooperate, as one of many factors the Department outlined in its AFA Memo.

Department's Position:

Section 776(a)(2) of the Act provides that, if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to section 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that the Department shall not decline to consider information deemed "deficient" under section 782(d) if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Furthermore, section 776(b) of the Act states that if the Department “finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission . . . , in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.” See also Statement of Administrative Action (“SAA”) accompanying the URAA, H.R. Rep. No. 103-316 at 870 (1994). For the reasons outlined below, as we found in the preliminary results, the Department continues to find that Shanghai Bloom did not act to the best of its ability to comply with the Department’s requests for information in this new shipper review. The Department finds that Shanghai Bloom withheld information requested by the Department, failed to provide information when requested at verification, significantly impeded the Department’s verification, and submitted information on the record related to factors of production, corporate structure, and sales process that could not be verified. Because Shanghai Bloom did not cooperate to the best of its ability in the proceeding, the Department finds it necessary, pursuant to sections 776(a)(2)(A),(C) and (D) and 776(b) of the Act, to use AFA as the basis for these final results of review for Shanghai Bloom. Additionally, as explained further below, because Shanghai Bloom deleted information needed to verify completeness and price negotiations, sections 782(d) and (e) of the Act are not applicable.

Specifically, as provided under section 776(a)(2)(A), (C), and (D) of the Act, the Department continues to find that Shanghai Bloom withheld information from the Department and significantly impeded Department’s verification of its corporate structure and sales process. As the Department stated in its AFA Memo, in its responses to the Department’s requests for information, Shanghai Bloom asserted that its official email account was the only email account that Shanghai Bloom had used for official business.² At verification, the Department discovered that the general manager’s daughter’s email account was also used for official business (e.g., FDA Registration).

Thus, Department officials asked to see all correspondence contained in the email account to verify what the email account contained, and whether any additional official business related to the establishment of Shanghai Bloom or sales to the United States was conducted via that particular email account. As stated in the AFA Memo, after requesting access to view the email account, the Department noted that there were no sent emails, no contacts, nor any emails or contacts in the deleted items folder. The general manager stated that his daughter had deleted all information (i.e., all emails, addresses, sent mail, deleted items, and presumably any electronic correspondence from the FDA confirming that Shanghai Bloom’s registration was successful) from the account overnight, prior to allowing the Department access, and asserted that this information was personal in nature. The deletion of emails from the email account the respondent used to register with the FDA essentially deprived the Department of access to a key

² See Shanghai Bloom’s Response to the Department’s Second Supplemental Questionnaire at 3, (March 22, 2007) (“Second Supplemental”). See also Shanghai Bloom’s Response to the Department’s Third Supplemental Questionnaire at 1, (April 13, 2007) (“Third Supplemental”).

piece of information the respondent needed to export the subject merchandise to the United States. Thus, the Department was unable to accurately verify whether the sale in question correctly entered the United States. Because all emails were deleted from the general manager's daughter's account prior to granting the Department access, the Department was also unable to verify the original confirmation of Shanghai Bloom's successful FDA registration.

Additionally, beyond an ability to confirm information on the FDA registration document, the key issue presented by this situation is that the Department discovered that Shanghai Bloom had an additional, unreported e-mail account it used in connection with its sole U.S. sale. When discovering at verification previously unreported information, or sources of information, the Department seeks to determine the extent of the unreported information and its potential relevance for the antidumping duty analysis. Given that FDA registration is a requirement for Shanghai Bloom's sole U.S. sale to enter the United States, it was clear to the Department that the unreported email account was used for critical business. Accordingly, the Department requested access to the email account to determine the extent of the unreported information. Rather than providing access to the account immediately, Shanghai Bloom chose to provide access only after it permitted deletion of the emails in the account, directly preventing the Department from investigating this information source.

Moreover, in its case brief, Shanghai Bloom presented a different story from that given at verification as to why the daughter's account was used to register with the FDA, when its official email account was already opened. In the case brief, Shanghai Bloom asserts that the general manager explained that his daughter had asked him to try her newly opened email account. However, none of the information offered in the case brief is corroborated by record evidence, nor does Shanghai Bloom cite to record evidence to support its assertion. In contrast, the Memorandum to the File, through Christopher D. Riker, Program Manager, AD/CVD Operations, Office 9, from Anya Naschak, Senior International Trade Compliance Analyst, and Michael Holton, Senior International Trade Compliance Analyst, regarding Verification of the Questionnaire Responses of Shanghai Bloom International Trading Co. Ltd., in the Antidumping New Shipper Review of Honey from the People's Republic of China ("Shanghai Bloom Verification Report") at 7 states that Mr. Zhu explained that he requested that his daughter help with the FDA registration as she had an email account and he was unfamiliar with computers. Post-verification, the Department remains confronted with conflicting information regarding the usage of the general manager's daughter's email account. Because the Department was unable to access and review the information in the account, the Department is now unable to determine what other information related to Shanghai Bloom's operations and corporate structure might have been included in the information deleted from the account.

Shanghai Bloom made a single sale to the United States during the period of review. As Shanghai Bloom reported to the Department, the sale was negotiated via email messages. Thus, focusing on the company's email accounts, especially a previously unreported email account used for official business purposes, was essential to establishing whether or not there were any additional sales not reported by Shanghai Bloom. Therefore, the Department finds that Shanghai

Bloom's failure to report the second email account, and the deletion of information in that account at verification warrants the application of AFA pursuant to section 776(a)(2)(A), (C), and (D) of the Act.

Second, the Department continues to find that it was unable to verify whether the sales correspondence submitted on the record by Shanghai Bloom were true representations of the actual email correspondence between Shanghai Bloom and its importer because Shanghai Bloom deleted all original email correspondence from its official account prior to verification. Shanghai Bloom stated in its questionnaire responses that it conducted its sales negotiations via email, and at verification, the Department found it necessary to view Shanghai Bloom's email account to corroborate that Shanghai Bloom had conducted sales negotiations with its U.S. customer as part of sales process and completeness, as provided for in the verification outline. See Letter from Christopher D. Riker, Program Manager, AD/CVD Operations, Office 9, to Shanghai Bloom, regarding [New Shipper Review of Honey from the People's Republic of China: Verification Agenda](#), dated May 8, 2007 ("Verification Outline"). Again, Shanghai Bloom made a single sale to the United States and was responsible for allowing for the verification of original documentation submitted on the record. Since there were no emails contained in this account, the Department was unable to verify whether this account was actually used by Shanghai Bloom to conduct correspondence with its U.S. customer. The Department was therefore unable to verify whether sales negotiations actually took place between Shanghai Bloom and its customer. Thus, the Department finds that the application of AFA is warranted as provided for in section 776(a)(2)(D) of the Act.

Additionally, the Department finds that the record of this new shipper review contains conflicting information from Shanghai Bloom as to whether Shanghai Bloom had access to the supplier's FDA registration as the supplier informed the Department at verification. We disagree with Shanghai Bloom's assertion that Ms. Zhang could not access Shanghai Bloom's or its supplier's FDA registration due to a language barrier or due to her busy managerial duties. Shanghai Bloom made a single sale to the United States during the POR, which required Ms. Zhang to register with the FDA, again, a key component of being able to export subject merchandise to the United States. Shanghai Bloom impeded the verification of its sales information when Ms. Zhang did not access the FDA registration. By impeding the Department at verification with regard to the FDA registration, the Department was unable to verify the record information submitted by the respondent. Ms. Zhang's failure to access the FDA registration was pertinent to this verification, given that Ms. Zhang indicated that it was she who had initially registered the company and that conflicting information in Shanghai Bloom's initially submitted FDA registration caused the Department to defer initiation of this new shipper review at the very outset. Shanghai Bloom did not provide an alternate person to access the FDA registration, because there was no alternate. In addition, the Department continues to find that Ms. Zhang's seeming inability to provide access to Shanghai Bloom's supplier's FDA registration despite having on-line access to it, was a decision by Shanghai Bloom to withhold information that had been requested by the Department at verification, and AFA is warranted pursuant to section 776(a)(2)(A) and (C).

With respect to the Department's inability to verify the office location leased by Shanghai Bloom during the POR, we first note that Shanghai Bloom submitted new information in its case brief in stating that the verifier wrote in a notebook that the construction foreman stated construction began in March. Shanghai Bloom's Verification Report at 3 states that no individuals working on site could confirm the date that construction began or what existed at the location prior to construction, which is what the Department found at verification. Shanghai Bloom submitted a minor correction at the beginning of verification stating that it had moved office locations at the beginning of 2007. As the new office location and the old office location were both located in Shanghai, the Department requested to visit the old office location. However, Shanghai Bloom officials initially refused to allow Department officials to drive to this location and indicated it was located nearly four hours away by car. Department officials explained that the verification of Shanghai Bloom's prior location was important to the Department's documentation of Shanghai Bloom's corporate structure during the POR. Because Shanghai Bloom originally did not allow the verifiers to drive to the former location, and because ultimately, the Department was not able to determine whether the former office location existed, the Department continues to find that this information related to corporate structure could not be verified.

In addition, as stated in its AFA Memo, the Department found numerous discrepancies with respect to a substantial number of the factors of production for the honey produced by Linxiang Jindeya, Shanghai Bloom's unaffiliated supplier, including queen bees, the reported bee count, water for beekeeping, and packing for by-products. These discrepancies precluded the Department from verifying the accuracy of the information the respondent placed on the record of the review and calls into question the overall reliability of the reported factors of production information. Linxiang Jindeya is an integrated beekeeping operation and processor of finished honey. As several of the beekeeping factors were unable to be verified, this calls into question the accuracy of all of Linxiang Jindeya's factors of production, for both beekeeping and processing.

Specifically, for queen bees, as stated in the Memorandum to the File, through Christopher D. Riker, Program Manager, AD/CVD Operations, Office 9, from Anya Naschak, Senior International Trade Compliance Analyst, and Michael Holton, Senior International Trade Compliance Analyst, regarding Verification of the Questionnaire Responses of Shanghai Bloom that relate to Linxiang Jindeya Bee-Keeping Co., Ltd., in the Antidumping New Shipper Review of Honey from the People's Republic of China ("Linxiang Jindeya Verification Report") at 17, the general manager was unable to provide the dates in 2006 in which queen bees were produced. Shanghai Bloom asserts that the "verifier walked away" when presented with records for late 2006. However, this is the first time that Shanghai Bloom has made this allegation. This information constitutes unsubstantiated new factual information which is not on the record of this review. Further, the verification reports were released with the preliminary results, and thus, Shanghai Bloom had an opportunity to comment on what was included in the verification reports. Shanghai Bloom, however, did not avail itself of this opportunity to comment, and the Department finds that submitting new information regarding this aspect of verification in the case

brief is untimely. Therefore, the Department finds that Shanghai Bloom has not provided evidence to substantiate that it had queen bee production in late 2006, as opposed to early 2006 during the POR.

Additionally, the issue still remains that Shanghai Bloom's supplier made conflicting statements at verification regarding whether Linxiang Jindeya had queen bee reproduction. Originally, Mr. Jin, the general manager stated that Linxiang Jindeya's beekeepers check to ensure there is only one queen bee per hive, and if an additional queen is present, it is killed. See AFA Memo at 3. When evidence of queen bee reproduction was found by verifiers (i.e., the playing cards), Mr. Wen, the beekeeper, stated those hives have an existing queen and a newly bred queen. See Linxiang Jindeya Verification Report at 11-12. As petitioners point out in their rebuttal brief, Shanghai Bloom did not explain why it made conflicting statements with regard to whether it had queen bee production, leading the Department to find that it could not verify Linxiang Jindeya's queen bee production. Pursuant to Nippon Steel, the Department finds that Shanghai Bloom did not act to the best of its ability because it submitted conflicting information in its questionnaire responses and at verification regarding the existence of queen bees, information which is necessary in determining Shanghai Bloom's supplier's production process of the subject merchandise.

With respect to the reported bee count, the issue is not, as Shanghai Bloom asserted, that the Department requires an exact bee count, but that Shanghai Bloom gave multiple conflicting explanations for how its supplier accounted for all of its bees. As we stated in the AFA Memo at 5, Linxiang Jindeya provided conflicting information as to whether they utilized a "standard" of 2,500 bees per hive per the scientific publication submitted on the record, or utilized a photograph of a bee comb to report the number of bees per hive to the Department. Shanghai Bloom was unable to resolve this discrepancy either at or following verification. Furthermore, we agree with Petitioners that a respondent must offer consistent explanations and maintain sufficient records to corroborate its explanations. Moreover, as noted in the verification report, while the claimed standard would result in 2,500 bees per hive, the photo appeared to indicate substantially more bees per hive, such that any relevant FOP for bees could not be determined.

For water, the Department has found that water should be valued as a direct input, even if it is acquired at no cost. See, e.g., Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review, 69 FR 58392 (September 30, 2004) and accompanying Issues and Decision memorandum at Comment 1. The Department disagrees with Shanghai Bloom's assertion that water is not a major input and is utilized in "trifling" amounts. As Petitioners point out, water is used to dilute two major inputs in the beekeeping stage, and therefore, the Department finds that water is a major input and should have been reported as a factor of production by Shanghai Bloom.

With respect to packing bags, without making a determination as to whether the Department should or should not value packing by-products in reused sugar bags (although Shanghai Bloom has pointed to no case precedent where the Department does not value recycled materials), the burden, again, is on the respondent to create a complete and accurate record pertaining to its

factors of production. Therefore, Shanghai Bloom should have reported in its questionnaire responses that it packed its by-products in re-used sugar bags. In addition, for the raw honey that was left in the hives to feed the bees, which was not accounted for by Linxiang Jindeya in its total raw honey production, the Department was unable to verify, as Petitioners point out, all FOPs needed to feed the bees. Discovering information at verification that Shanghai Bloom's supplier used packing materials for its by-products, in addition to finding that it used water in the beekeeping stage, and fed its bees with raw honey, calls into question the accuracy of all of Linxiang Jindeya's FOPs, because Shanghai Bloom withheld information and the Department was unable to verify these major inputs.

The Department continues to find that Shanghai Bloom's importer withheld information from the Department after multiple requests for information by the Department, which was required to perform a bona fides analysis. We agree with Petitioners that it is the Department's decision which information is relevant to its investigation, not that of Shanghai Bloom's importer.

In sum, the Department continues to find that Shanghai Bloom failed to cooperate to the best of its ability because it hindered the Department's verification by destroying and deleting information pertinent to the Department's analysis of its sales negotiation process and the accuracy of the sales information reported. Shanghai Bloom also repeatedly provided information regarding its submitted FOPs at verification that conflicted with its responses to the Department's original and supplemental questionnaires. Finally, Shanghai Bloom's importer failed to provide complete and accurate information to the Department, hindering the Department's ability to conduct a bona fides analysis. For all of the reasons outlined above, the Department finds, pursuant to sections 776(a)(2)(A), (C), (D), and 776(b) of the Act, the application of AFA is warranted as the Department has determined that Shanghai Bloom has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information.

AGREE _____

DISAGREE _____

Stephen J. Claeys
Acting Assistant Secretary
for Import Administration

Date