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October 24, 2003

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

FROM: Joseph A. Spetrini  
Deputy Assistant Secretary  
AD/CVD Enforcement Group III

SUBJECT: Issues and Decision Memorandum for the Final Results of the  
New Shipper Review of the Antidumping Duty Order on  
Honey from the People's Republic of China

#### Summary

We have analyzed the comments and rebuttal comments of interested parties in the new shipper review of the antidumping duty order on honey from the People's Republic of China (PRC) (A-570-863). As a result of our analysis, we have made changes in the margin calculations. We recommend that you approve the positions we have developed in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in this review for which we received comments from the interested parties:

- Comment 1: *Bona Fides* of Wuhan Bee Healthy Co., Ltd.'s U.S. Sale
- Comment 2: Surrogate Value for Raw Honey
- Comment 3: Factory Overhead, Selling, General and Administrative (SG&A), and Profit Ratios
- Comment 4: Surrogate Value for Coal
- Comment 5: Surrogate Value for Electricity
- Comment 6: Exclusion of Certain Import Data in Calculating Certain Surrogate Values

#### Background

We published in the *Federal Register* the preliminary results of this new shipper review on June 3, 2003. See *Notice of Preliminary Results of Antidumping Duty New Shipper Review: Honey from the People's Republic of China*, 68 FR 33099 (June 3, 2003) (*Preliminary Results*).

On July 16, 2003, the Department extended the final results of this new shipper review by 60

days until October 24, 2003. *See Honey from the People's Republic of China: Extension of Time Limit of Final Results of New Shipper Review*, 68 FR 42001 (July 16, 2003). *See also* Memorandum to the File through Donna L. Kinsella: Correction of *Notice of Extension of Time Limit of Final Results of New Shipper Review; Honey from the People's Republic of China* (A-570-863) dated July 22, 2003.

The period of review (POR) is December 1, 2001, through May 31, 2002. We invited parties to comment on our *Preliminary Results*. We received case briefs from the respondent, Wuhan Bee Healthy Co., Ltd. (Wuhan) and petitioners (the American Honey Producers Association and the Sioux Honey Association (collectively, petitioners)), on July 21, 2003. We received rebuttal briefs from the same parties on July 28, 2003. On July 31, 2003, we held a public hearing for this new shipper review.

#### Scope of the Antidumping Duty Order

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

The merchandise subject to this review is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and the U.S. Bureau of Customs and Border Protection (BCBP) purposes, the Department's written description of the merchandise under order is dispositive.

#### Changes Since the *Preliminary Results*

1. Surrogate Value for Raw Honey - *See* Comment 2 below.
2. Factory Overhead, SG&A, and Profit Ratios - *See* Comment 3 below.
3. In accordance with the Department's current practice, for these final results, we have calculated Wuhan's cost of manufacture (COM) as the sum of direct materials, energy, labor, raw material inland transportation, and factory overhead less its by-product revenue. We then applied the surrogate ratios as adjusted to Wuhan's COM exclusive of the by-product offset, because the denominator in the ratio and the amount to which the ratio is applied must be on the same basis. *See Notice of Amended Preliminary Antidumping Duty Determination of Sales at Less Than Fair Value: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 10440 (March 5, 2003).

For our analysis of the above-mentioned changes to our preliminary margin calculation, see Memorandum to the File regarding Analysis of the Data Submitted by Wuhan Bee Healthy Co., Ltd. in the Final Results of the New Shipper Review on the Antidumping Duty Order on Honey from the People's Republic of China (October 24, 2003) (Final Analysis Memo) and Memorandum to the File regarding Final Results of New Shipper Review of the Antidumping Duty Order on Honey from the People's Republic of China; Factors of Production Valuation (October 24, 2003) (Final FOP Memo).

## Discussion of the Issues

### **Comment 1: *Bona Fides* of Wuhan's U.S. Sale**

Petitioners assert that the Department's "totality of circumstances" analysis for evaluating the *bona fides* of U.S. sales supports a finding that Wuhan's sale is not a *bona fide* transaction. Specifically, petitioners state that Wuhan has placed on the record only a copy of the short-term sales contract pursuant to which the single reported sale was made, and it has submitted no other documentation demonstrating the existence of back-and-forth price negotiations that are typical of a normal business transaction. Petitioners contend that, based on Wuhan's failure to submit any documentation or other relevant information to establish that the sale at issue was negotiated at arm's length and that the price was not artificially set, there is no evidence on the record to establish that the first criterion of the totality of the circumstance analysis is satisfied.

Petitioners note that in evaluating whether the price reported for a particular sale is commercially reasonable, the Department has examined the average unit values (AUVs) for other contemporaneous shipments of subject merchandise that entered the United States. See *Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review and Final Rescission of Antidumping Duty New Shipper Review*, 68 FR 1439 (January 10, 2003) (*Crawfish from the PRC*) and accompanying Issues and Decision Memorandum at Comment 1; *Certain Preserved Mushrooms from the People's Republic of China: Final Results and Partial Rescission of New Shipper Review and Final Results and Partial Rescission of the Third Administrative Review*, 68 FR 41304 (July 11, 2003) (*NSR Mushrooms from the PRC*) and accompanying Issues and Decision Memorandum at Comment 2.

Petitioners claim that information published by the Department's Census Bureau, and placed on the record of this proceeding by petitioners, clearly demonstrates that the price reported by Wuhan, with respect to its single sale, is significantly higher than the prevailing prices at which other PRC producers and exporters sold honey to customers in the United States during the POR, and specific to the month of the sale. Petitioners further claim that during the POR, 15.8 million pounds of PRC honey were imported into the United States, demonstrating that Wuhan's customer had available to it ample sources of PRC honey at prices far lower than the price it reportedly paid to Wuhan. The record,

according to petitioners, does not contain any information that would justify the unreasonably high price paid by Wuhan's U.S. customer. Moreover, petitioners assert that Wuhan has offered no explanation as to why its U.S. customer would pay a price that is significantly higher than the prices other PRC producers and exporters were able to obtain for sales of almost 16 million pounds of subject merchandise made in the United States during the POR. Petitioners claim that the product sold by Wuhan is a common, commodity product, shipped by an unknown company that previously did not participate in this market, with no special consideration that would justify its reported price level.

Citing *NSR Mushrooms from the PRC*, petitioners note that the Department also examines the quantity of subject merchandise at issue in a sale in assessing the *bona fides* of a reported transaction. See, e.g., *NSR Mushrooms from the PRC* and accompanying Issues and Decision Memorandum at Comment 2 (determining a single sale reported by a respondent not to be a *bona fide* transaction because it consisted of "an unreasonably low quantity relative to other commercial transactions involving comparable merchandise during the POR."). Petitioners argue that the quantity of Wuhan's sale is far less than the 40,000 to 45,000 pounds typically held in a full ocean-going container, the international standard quantity in which bulk honey is bought and sold. According to petitioners, the record indicates that the quantity of honey at issue in Wuhan's single reported shipment is significantly less than other comparable shipments of bulk PRC honey that were imported into the United States during the POR. Moreover, petitioners contend that every single entry of bulk (*i.e.*, non-retail packed) PRC honey identified by petitioners consists of at least a single ocean-going container sized lot of honey, with many shipments consisting of multiple containers of subject merchandise. Petitioners assert that this information demonstrates that PRC exporters were able to export honey to the United States in ocean-going container sized lots, irrespective of the existence of the dumping order.

Citing *Crawfish from the PRC*, petitioners claim that a third factor examined by the Department in analyzing the *bona fides* of a reported sale is whether the reported sale is "consistent with {the} company's normal business practices." See *Crawfish from the PRC* and accompanying Issues and Decision Memorandum at Comment 1. Petitioners assert that the record before the Department demonstrates that Wuhan's single sale is not consistent with its "normal business practices" because Wuhan has stated that its first sales to other customers in other markets consisted of full containers, and thus, supports a finding by the Department that the sale is not a *bona fide* commercial transaction.

The last factor examined by the Department, according to petitioners, in evaluating the *bona fides* of a reported sale is whether the transaction is consistent with the normal business practices for the relevant foreign industry. See *Crawfish from the PRC* and accompanying Issues and Decision Memorandum at Comment 1. Petitioners contend that evidence placed on the record by petitioners, as well as evidence that the Department appears to have gathered on its own initiative, reflect that "the quantity of Wuhan's shipment is among the lowest and its price is among the highest" of comparable shipments of PRC honey that entered the United States during the POR. See *Preliminary Results* at 7. Thus, petitioners argue that the vast majority of PRC honey shipped to the United States during the

applicable POR by other producers and exporters was made at lower prices and in greater quantities than the single sale reported by Wuhan,

thereby demonstrating that Wuhan's single transaction is inconsistent with the industry's normal business practice.

Petitioners claim that the *Preliminary Results* suggest the Department is considering the adoption of an analytical framework that would find only the highest priced or the lowest quantity sale of comparable merchandise entered during the POR not to be a *bona fide* commercial transaction. Petitioners argue that a standard that finds only a shipment with the single highest price or the single lowest quantity not to be a *bona fide* transaction will allow companies making shipments that are not commercially reasonable to secure inappropriately a company-specific dumping margin through a new shipper review.

Petitioners conclude, therefore, that substantial record evidence supports a determination to rescind this new shipper review of Wuhan on the basis that its single reported sale was made at an aberrationally high price and consisted of an aberrationally small quantity, and that record evidence demonstrates that the single sale at issue is not consistent with Wuhan's normal business practices nor the normal business practices of other PRC producers and exporters of honey. According to petitioners, the totality of record evidence demonstrates that Wuhan has not completed a *bona fide* transaction and this proceeding should be rescinded by the Department in its final results.

Respondent refutes petitioners' argument that it has not completed a *bona fide* transaction. Respondent contends that the Department verified that the sale occurred as Wuhan described and that Wuhan was paid for the full value of the sale by its U.S. customer, and thus, the Department should find the sale legitimate. Respondent asserts that its sales-related documents were verified as accurate by the Department. See Memorandum to the File; New Shipper Review of the Antidumping Duty Order on Honey from the People's Republic of China (PRC); Verification of U.S. Sales and Factors of Production Information Submitted by Wuhan Bee Healthy Co., Ltd., dated April 22, 2003, (Wuhan's Verification Report) at 12-13. Citing to *Brake Rotors from the PRC*, respondent claims that the Department disagreed with the petitioner's argument in that case that a new shipper's sales were not *bona fide* and should be rejected because the Department determined that record evidence, including verified sales documentation, did not support petitioner's claims. See *Brake Rotors from the People's Republic of China: Final Results of the Third New Shipper Review and Final Results and Partial Rescission of the Second Antidumping Duty Administrative Review*, 65 FR 64664 (October 30, 2000) and accompanying Issues and Decision Memorandum at Comment 4.

Respondent claims that petitioners attempt to impose their own manner of doing business upon Wuhan and find fault in the lack of documentation relating to its U.S. price negotiation. Respondent contends that it cannot be penalized for failing to provide documentation that does not exist. See *NTN Bearing Co., Ltd. v. United States*, 186 F.2d 1257,1275 (CIT 2002).

Citing the 1998-00 new shipper review in *Mushrooms from the PRC*, respondent claims that the Department concluded that it was the petitioner's burden to demonstrate that the sale in question was not *bona fide* based on the "totality of the circumstances," rather than based on only a few of the factors the Department normally considers. See *Certain Preserved Mushrooms from the People's Republic of China: Final Results of First New Shipper Review and First Antidumping Duty Administrative Review*, 66 FR 31204 (June 11, 2001) (1998-00 NSR *Mushrooms from the PRC*), and accompanying Issues and Decision Memorandum at Comment 10. In the instant case, respondent argues that petitioners have not addressed the factors normally considered by the Department, including: (1) timing of the sale, (2) expenses arising from the transaction, (3) whether the sale was made at a loss, and (4) whether the sale was made at arm's length. Respondent contends that petitioners have failed to meet their burden of demonstrating that Wuhan's sale is not *bona fide* based on the "totality of the circumstances."

In response to petitioners' argument that Wuhan's price was too high in comparison with other imports of honey from the PRC around the time of Wuhan's sale, respondent states that concern over chloramphenicol (CAP) in PRC honey was one of the important factors impacting the price and quantity of its sale. According to respondent, Wuhan provided further information regarding Wuhan's efforts to guarantee that its first sale of honey to the United States was free of CAP. Respondent claims that the price to its U.S. customer reflected Wuhan's careful production and testing procedures and, significantly, its guarantee to provide CAP-free honey.

In any event, respondent contends that petitioners' starting price for their comparison to AUVs is wrong, even assuming such a comparison is proper in the first place. Respondent explains that its import-related expenses must be deducted when comparing Wuhan's price to entered values of other PRC honey imports, whose CBP value does not include these amounts. Respondent claims that since the lowest antidumping deposit rate from the investigation was 25.88 percent, if one was to assume that all honey from the PRC imported during the POR entered at the lowest rate, then the Department would need to increase the "AUV" by at least 25.88 percent because Wuhan's customer would have had to act as the importer of record and would have been required to post the cash deposit of estimated dumping duties. Respondent argues that when Wuhan's price is placed on the same basis as other imports from the PRC, its price was only slightly higher than the average.

Moreover, respondent asserts that contrary to petitioners' contention that Wuhan's price was unreasonable, it made subsequent U.S. honey sales to multiple customers at prices that were higher than the price of its initial sale. Respondent states that the Department's verification exhibits demonstrate that it made subsequent U.S. sales, outside the new shipper review period, at even higher prices than was charged by Wuhan to the unrelated customer on the "new shipper" sale. Furthermore, respondent notes that it submitted for the record a summary of its U.S. sales invoices issued during the first review period confirming that the price charged by Wuhan on the new shipper sale was in line with prices to several different U.S. customers long after the new shipper review period was over.

Respondent asserts that these prices reflected the scarcity of CAP-free honey that contributed to the rapid increase in prices of honey from all sources and as such Wuhan's first sale was at a commercially reasonable price. Citing Exhibit 7 of its case brief, respondent claims that according to the University of Nebraska and the Nebraska Beekeepers Association, the "main driver for the increase is the discovery of chloramphenicol residues in honey originating from China." Respondent further claims that this statement corroborates Wuhan's explanation as to why its U.S. customer would pay a premium for honey that was guaranteed to be free of CAP and that the CAP effect was a significant commercial factor that caused prices to rise to record levels.

Respondent contends that the quantity of Wuhan's first shipment in addition to its sale price were both directly impacted by its customer's insistence upon a guarantee of CAP-free honey. Respondent argues that other PRC companies that shipped full containers of tainted honey were acting in a commercially unreasonable way and that to agree with petitioners the Department would have to adopt a view that Wuhan should have acted in a reckless manner in order to make a so-called "reasonable" sale.

According to respondent, petitioners ignore the evidence placed on the record in Wuhan's July 7, 2003, submission, confirming that other U.S. purchasers imported numerous partial containers of honey from various countries. Respondent provided data indicating that during the POR there were several partial-container loads packed in drums similar to what Wuhan used. Respondent claims that these facts also support that Wuhan and its U.S. customer were acting in a perfectly reasonable and prudent manner in agreeing to a partial container load. Respondent states that the operative question was whether it was reasonable, under these facts and circumstances, for a U.S. buyer to purchase a partial container load of imported honey. Respondent claims that the evidence on the record clearly establishes that numerous U.S. buyers purchased partial container loads of bulk honey, in drums, from a variety of countries during and after the POR.

Respondent asserts that petitioners' attempt to loosen the Department's analytical framework should be rejected. According to respondent, petitioners are concerned that the Department is contemplating applying a standard that would find only the highest prices or the lowest quantity sales to be not *bona fide*. Respondent notes that petitioners urge the Department to exercise its "wide discretion" in order to enable it to decide that sales are not *bona fide* even if there are numerous instances of other sales at similar prices or quantities. Respondent argues that the Department should not adopt petitioners' self-serving misinterpretation of the facts and that, simply because a sale may fall at the boundaries of a distribution graph does not make it "atypical." Respondent claims that petitioners are simply requesting that the Department begin whittling away at the fringes of its normal *bona fides* analysis so as to leave only average-priced sales as true *bona fide* sales. Respondent contends that there is no statutory or regulatory authority that requires a new shipper to sell at an "average" price and that petitioners' concept of ever-shrinking thresholds for "reasonableness" must be rejected.

For the above-stated reasons, respondent asserts that the Department should reject petitioners'

argument to disqualify Wuhan from this review for failure to make a *bona fide* sale.

Department's Position:

In the preliminary results of this new shipper review, the Department found that Wuhan's sale was *bona fide*. See *Preliminary Results* at 7. However, the Department noted in the preliminary results that in comparison to shipments from other PRC honey exporters/producers, the quantity of Wuhan's shipment was among the lowest and its price was among the highest, and therefore indicated that it intended to fully examine all issues pertaining to the *bona fides* of Wuhan's transaction for purposes of the final results of this review.

We have now analyzed all of the information provided by Wuhan and petitioners with respect to the question of whether the new shipper sale under review constitutes a *bona fide* sale, reviewable under the new shipper provisions of the Department's regulations. 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 a sale is not typical of a company's normal business practices, the sale is not consistent with good business practices, or "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 (February 21, 2002) (affirming Commerce's application of the commercially reasonable test in *Romanian Plate*) (*Windmill*). The U.S. Court of International Trade (CIT) has agreed 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*).

As discussed in greater detail below, in determining whether the 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 *NSR Mushrooms from the PRC* and accompanying Issues and Decision Memorandum at Comment 2. The Department's discretion in making this determination has been affirmed by the CIT in *Windmill* and *Chang Tieh*.

Consistent with these principles, the Department normally considers factors such as, *inter alia*, (1) the timing of the sale, (2) the sale price and quantity, (3) the expenses arising from the sales transaction, (4) whether the sale was sold to the customer at a loss, and (5) 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 *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.

For the final results, we considered all information on the record to determine whether the totality of the circumstances surrounding the one sale made by Wuhan indicates that this sale was *bona fide*, including price, quantity, payment and delivery terms, and the legitimacy of the buyer and seller. Applying the above-mentioned factors to this case, we have determined that there is insufficient evidence to suggest that Wuhan's sale was anything other than a *bona fide* commercial transaction, and the other circumstances surrounding this sale do not cause us to reject the commercial reasonableness of this single transaction. We discuss this in greater detail below.

Petitioners point out that the quantity of Wuhan's single sale is small, amounting to approximately 13,200 pounds, which is less than a full container load. While the quantity of the new shipper sale is small, we note that single sales, even those involving quantities of this size are not inherently commercially unreasonable. We also note that the majority of Wuhan's U.S. sales of bulk honey after the POR were also less than a full container load (*i.e.*, less than 40,000 pounds). See Attachment at Exhibit 2 to Memorandum to the File: Placement of Wuhan Bee Healthy Co., Ltd.'s (Wuhan's) Section C&D Response from the First Administrative Review on the Record of this New Shipper Review, dated May 16, 2003. When compared to industry practices during the POR, we find that it is not unusual for other exporters to ship in similar quantities to the United States. See Wuhan's July 7, 2003, submission at 10 and Exhibit 8.

With regard to pricing, we compared the unit price of Wuhan's single U.S. sale to the average prices of other PRC honey imports during the POR, as well as to the AUVs of honey imports from all countries during the POR. In making these comparisons, we note that while the price of the new shipper sale is somewhat higher than the average price of honey from other PRC exporters, we find that in comparison to the industry-wide AUV of U.S. imports of honey from all countries (specific to the POR for entries under HTSUS number 0409.00), Wuhan's new shipper sale price is reasonable.<sup>1</sup> It is the Department's practice to consider, among other things, U.S. import AUVs from all countries worldwide as such data is reasonably objective representing, as it does, a wide breadth of values sourced from countries around the world. See *NSR Mushrooms from the PRC* and accompanying Issues and Decision Memorandum at Comment 2. In making this comparison, we also note that several other sales of honey shipped to the United States during the POR had AUVs higher than Wuhan's AUV. See petitioners' May 2, 2003, submission at Exhibit 2 and petitioners' May 19, 2003, submission at Exhibit 2. Moreover, record evidence indicates that the price of Wuhan's new shipper sale is lower than prices at which Wuhan sold honey to the United States subsequent to the POR. See Wuhan's May 9, 2003, submission at 3.

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<sup>1</sup> The price of Wuhan's new shipper sale exclusive of various incurred fees and expenses is less than the industry-wide AUV of \$0.62 per pound.

With regard to other terms of sale and the legitimacy of the negotiation process, we note that the agreement on the price between the seller, Wuhan, and the U.S. buyer appears to have

been reached through a credible negotiation process. *See, e.g.*, Wuhan's December 5, 2002 supplemental questionnaire response. Specifically, the result of this negotiation process (*i.e.*, a purchase agreement signed by both parties) between the parties show a seller seeking to maximize revenue and a buyer seeking to minimize cost and risk. Therefore, we find that the selling practices reflected in Wuhan's U.S. sale, including the timing of the order, invoicing, shipment, and expenses, do not appear unusual. *See* Wuhan's Verification Report at page 11 and Verification Exhibit 7. Moreover, there is no information on the record questioning the legitimacy of the buyer, seller, payment and delivery terms for Wuhan's U.S. sale.

Therefore, based on the totality of circumstances, we determine that Wuhan's single sale is a *bona fide* transaction.

## **Comment 2: Surrogate Value for Raw Honey**

In its case brief, respondent argues that the Department has a choice between two country-wide sources: the March 1, 2000, *Tribune of India* article used by the Department in the *Preliminary Results*, and the March 6, 2001, *Tribune of India* article submitted by Wuhan. Respondent contends that the Department selected the older raw honey price without explanation and erred in choosing the less contemporaneous source. Respondent cites to *Sebacic Acid from the PRC*, in which the Department evaluated two country-wide surrogate values, neither of which was contemporaneous with the POR. According to respondent, the Department selected the newer value as it is the Department's practice to use data that are the most contemporaneous with the POR when selecting from two or more equally valid surrogate values (*see Sebacic Acid from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review*, 65 FR 49537 (August 14, 2000) and accompanying Issues and Decision Memorandum at Comment 9). In addition, respondent argues that if the Department chooses to use company-specific data, it should use the respondent-provided purchase prices from Tiwana and Jallowal Bee Farms (*see below* for full discussion).

According to respondent, the Department stated in *Ferrovanadium from the PRC*, that we prefer data that are more contemporaneous to the POI/POR to data that are less contemporaneous, and will normally update a value if more data covering additional months within the POI/POR become available to us between the preliminary and the final determination. *See Ferrovanadium from the People's Republic China: Final Determination of Sales at Less Than Fair Value*, 67 FR 71137 (November 29, 2002) (*Ferrovanadium from the PRC*) and accompanying Issues and Decision Memorandum at Comment 19. Therefore, respondent argues that the Department should select its March 2001, *Tribune of India* article for valuing raw honey, in accordance with its past practice, since it is a publicly-available, country-wide price that is more contemporaneous than the price used by the

Department in the *Preliminary Results*.

Respondent contends that petitioners' argument that the Department should use petitioners' company-specific price quotes, largely because some of them are claimed to fall within the POR and are therefore contemporaneous, fail to recognize that, once the Department applies the inflator to adjust a surrogate value in time, it becomes fully contemporaneous. Citing *Mushrooms from the PRC*, respondent argues that the Department stated that the purpose of using inflators is to adjust surrogate values that are outside the POR so that they become values which are applicable during the POR. See *Certain Preserved Mushrooms from the People's Republic of China: Final Results of the Third New Shipper Review and Final Results, and Partial Rescission of Second Administrative Review*, 67 FR 46173 (July 12, 2002) (*Mushrooms from the PRC*), and accompanying Issues and Decision Memorandum at Comment 8. Respondent further argues that the Department's decision to inflate its older value and use it for the *Preliminary Results* confirms that the Department is able to adjust data in order to make it contemporaneous.

Respondent asserts that there is no "cure" for the fundamental flaw in petitioners' proposed surrogate data, which consist of company-specific, non-public price quotes. Respondent further asserts that because the Department is not faced with a choice between surrogate values of equal quality it should therefore follow its past precedent and reject company-specific values where country-wide data is available. Respondent concludes, therefore, that since its article is publicly-available, country-wide, and can be inflated to be fully contemporaneous with the POR and because it is more contemporaneous than the article used by the Department in the *Preliminary Results*, the Department should value raw honey using Wuhan's March 2001, *Tribune of India* article in the final results.

According to petitioners, in its final results, the Department should not continue to rely on the March 2000, *Tribune of India* article in valuing raw honey because that source is not contemporaneous with the POR, and in fact predates it by 21 months. Petitioners contend that the record demonstrates that prices of raw honey in India have increased by over 50 percent during the POR, according to data submitted by Wuhan from the Tiwana Bee Farm and Jallowal Bee Farm. Petitioners argue that prices increased significantly during the POR and at such a rate that increases will not be appropriately reflected by the Department's application of the wholesale price index (WPI) to inflate the value identified in the March 2000, *Tribune of India* article to a supposed POR equivalent. Petitioners contend that raw honey prices in India increased at a rate that exceeds the WPI rate of inflation, such that a simple application of the WPI factor to the non-contemporaneous raw honey values reported in the March 2000, *Tribune of India* article will not appropriately reflect the actual prices of raw honey in India during the POR.

Petitioners argue that the quality of the price reported in the March 2000, *Tribune of India* article is also deficient relative to the other record information because the article does not identify the source of the pricing information, making it impossible to determine whether the price reported in the article is representative of a country-wide price in India. In contrast, according to petitioners, the producer- and consumer-specific information submitted by petitioners and Wuhan reflects prices from

major honey-producing regions in India, including Mahabaleshwar, Chandigarh, Virajpet, Rajasthan, Haryana, Uttar Pradesh, Jammu, Kashmir, and Karnataka. Petitioners claim that a simple average of the reported prices denominated in Indian currency (*i.e.*, Rupees (Rs.) 53.94 per kilogram (kg.)) is representative of prices in honey producing regions throughout India and, thus, is an industry-wide value. Petitioners further claim that Indian import data placed on the record indicating that the AUV of honey imports entering India during the POR (*i.e.*, December 2001 to May 2002) was Rs. 61.31 per kg. is consistent with the average of the reported prices. Petitioners argue that based on the statutory directive to use the “best available information” to value factors of production and the information on the record, the Department should rely on the average raw honey price of Rs. 53.94 per kg. derived from 13 producers and consumers of raw honey throughout India during the POR to value honey in its final results and should not continue to rely on the average price reported in the March 2000, *Tribune of India* article to value raw honey.

In their rebuttal brief, respondent claims that petitioners’ proposed average of raw honey prices obtained from several company-specific sources assumes that the quality of the data of the thirteen producers is the same. Respondent contends that the proposed average includes data of varying quality in terms of contemporaneity, type of producer (cooperative, private company, and market entity), and reliability to the extent that mixing these different data would only distort the average price of raw honey. According to respondent, petitioners’ surrogate prices have several flaws that render their data unusable including: 1) the prices are company-specific, 2) most prices have no supporting documentation, 3) the prices are aberrationally high and distorted by non-market forces, and 4) none of the prices are fully contemporaneous.

In support of its first point, respondent cites to the antidumping duty investigation of this case, in which the Department rejected petitioners’ proposed price for raw honey from Mahabaleshwar Honey Producers Cooperative (MHPC) because it “represents the value as experienced by a single processor of honey in a particular region of India.” *See Honey from the People’s Republic of China, Notice of Final Determination of Sales at Less Than Fair Value*, and accompanying Issues and Decision Memorandum at Comment 4 (October 4, 2001) (*Original Investigation*). Respondent asserts that more recently, the Department rejected the argument that it should use surrogate values derived from Indian surrogate companies instead of country-wide data. *See Fresh Garlic from the People’s Republic of China: Final Results of Antidumping Duty New Shipper Review*, 67 FR 72139 (December 4, 2002) (*Garlic from the PRC*) and accompanying Issues and Decision Memorandum at Comment 6.

In support of its second point, respondent argues that petitioners’ data is not proper publicly available information because (1) the source of the information has been improperly withheld by petitioners’ counsel from release under administrative protective order, (2) there is no supporting documentation for the factual assertions made by petitioners’ counsel’s in-house consultant, and (3) petitioners’ declarations are highly suspect as they are not consistent with other publicly-available information. Respondent contends that petitioners’ declarations are based on hearsay and petitioners have not provided government studies, newspaper articles, or even, at the very least, price lists from the

various producers named in their declarations. Furthermore, respondent claims that the CIT has stated that the Department must corroborate secondary information, such as market studies paid for by a petitioner's counsel, with information from independent sources. *See Yantai Oriental Juice Co. v. United States*, Slip Op 02-56 at 11 CIT (June 2002), (holding that "Commerce's use of Petitioners' Market Study is not in accordance with the law.") (citing 19 USC section 1677e(c) (1999) (*Yantai Oriental Juice*)). Respondent urges the Department to reject all surrogate data without support documentation based on the "substantial evidence" standard. According to respondent, the Department's decision must be supported by substantial evidence on the record, or they are otherwise not in accordance with the law. *See Fujitsu General Ltd. v. United States*, 88 F.3d. 1034,1038 (Fed. Cir. 1996). Thus, respondent argues that petitioners' undocumented and unsigned declarations do not rise to the "substantial evidence" standard the Department is required to follow by law.

In support of its third point, respondent argues that the Department should reject the prices for raw honey from the cooperatives because those prices reflect transfers of honey from the members to their own cooperatives. For example, respondent states that MHPC's financial statement indicates that it paid every single one of its members exactly Rs. 100 per kg. of raw honey. Respondent contends that if these same cooperatives were under investigation by the Department in a case on honey from India, the Department would reject costs based on purchases from affiliated suppliers absent cost of production information from those suppliers enabling the Department to determine that the affiliated party sales were made at a fair market value. *See* 19 CFR section 351.407(b) (requiring the Department to gather COP information from an affiliated party producing a "major input" to compare the transfer price and other arm's length prices). Similarly, respondent asserts that the Department should not use the prices from Khadi and Village Industries Commission because it is an entity created by the Indian government. *See* Wuhan's April 28, 2003, submission at Exhibit 1. Respondent asserts that, as a whole, the raw honey prices from the cooperatives and government entities are more than 35 percent higher than the average price from the other producers due to the lack of competition present in free market transactions.

In support of its fourth point, respondent argues that petitioners' price comparison is misleading because they are comparing the price for raw honey (53.94 Rs./kg.) with the price for processed honey from the Indian import data (61.31 Rs./kg.). Respondent asserts that the price from the Indian import data does not corroborate petitioners' price but rather demonstrates that petitioners' price is aberrational. From a business perspective, respondents argue that it is impossible that beekeepers would be buying raw honey at 53.94 Rs./kg. and exporting processed honey at 59.49 Rs/kg. Furthermore, respondent states that petitioners' average price of raw honey of 53.94 Rs./kg., which is an average of several undocumented, non-contemporaneous and non-market sources, is not consistent with other information on the record. Respondent states that the average price from the documented price lists of the Tiwana and Jallowal Bee Farms show an average value for the POR of 40.92 Rs./kg. or almost 40 percent lower than the average price of petitioners' sources.

With regard to the contemporaneity of petitioners' pricing information, respondent asserts that honey prices derived from MHPC cover honey purchases between March 2001 and April 2002,

which bleeds over onto 7 months that are outside the POR. Moreover, respondent asserts that the “costs chart” from the Khadi and Village Industries Commission are dated August 17, 2001, and July 1, 2002. Respondent also asserts that petitioners’ last declaration in their July 3, 2003, submission has eight sets of prices for February 2001, November 2002, and June 2003, none of which are contemporaneous with the POR. In contrast, respondent contends that the price lists it provided from the Tiwana and the Jallowal Bee Farms are signed, are dated, appear on the companies’ letterhead, and prove that prices for raw honey vary significantly from month to month. Respondents further contend that petitioners have themselves stated in their brief that the prices of raw honey between December 2001 and May 2002 increased more than 50 percent.

Respondent contends that the Tiwana and Jallowal price lists are the only fully contemporaneous data on the record. Respondent states that these price lists provide a price of raw honey during every month of the POR in two different regions in India. However, respondent claims that these prices are not the best information available because they are company-specific prices. Rather, respondent’s position is that the Department should not use company-specific quotes to comport with its established practice. Nevertheless, respondent argues that if the Department chooses to use company-specific data, it should use the Tiwana and Jallowal Bee Farms’ prices, which, unlike petitioners’ data are fully contemporaneous with the POR and have supporting documentation.

According to respondent, petitioners’ claim that Wuhan’s March 2001, *Tribune of India* article’s identification of imports from “China, Argentina, {and} Germany” as being imported into India at very competitive prices is inaccurate because Indian import data did not show honey from those countries imported into India between April 2000 and March 2001. See petitioners’ April 18, 2003, submission. Respondent asserts that it provided export data from China and Germany, which show, contrary to petitioners’ assertions, that honey was exported to India from these countries during April 2000 and March 2001. For some reason, however, respondent notes that the Indian import data did not report these honey imports from China and Germany. Nevertheless, respondent argues that the observations about imports by the officer from the North Indian Beekeepers Association were accurate for imports from three out of the four countries: China, Germany, and Australia. Respondent contends that petitioners have provided no evidence to show that this price is not reliable.

Respondent asserts that while its March 2001, *Tribune of India* article is not contemporaneous with the POR, it is the only published data on the record. Respondent asserts that the principle of selecting “published” data has further been upheld by the CIT. See *Union Camp Corp. v. United States*, 941 F. Supp. 108,116 (CIT 1996). Respondent claims that the Department routinely adjusts the time period for surrogate data if, as is the case here, the data is the most input-specific, reliable and represents a country-wide, rather than company-specific, market value. See, e.g., *Ferrovanadium from the PRC* and accompanying Issues and Decision Memorandum at Comment 19 (noting that the Department’s mandate is to choose the “best” data rather than follow absolute “rules.”).

Respondent concludes that petitioners’ argument that the Department should rely on a melting pot of average prices from their secret “declarations” and non-market sources instead of a

contemporaneous, nationally circulated newspaper runs contrary to the fundamental principle in non-market economy investigations of choosing published, publicly available information. Respondent argues that the Department should reject petitioners' data for the following reasons: 1) that it is distorted by non-market prices of several cooperatives and government entities, 2) that it has no supporting documentation, and 3) that it is company-specific. Instead, if the Department is to adhere to its practice of using country-wide market prices, respondent asserts that the Department should rely on the data contained in its March 2001, *Tribune of India* article to value the raw honey input. Nevertheless, respondent states that if the Department chooses to use company-specific data, it should use the price lists from the Tiwana and Jallowal Bee Farms Wuhan placed on the record of this proceeding, as they are documented, fully contemporaneous, market prices.

In their rebuttal brief, petitioners state that the record contains POR-specific pricing information submitted by both them and Wuhan from 13 different Indian producers and consumers of raw honey, from many major honey-producing regions in India. See petitioners July 3, 2003, submission at Exhibit 1. Therefore, according to petitioners, the record contains copious "country-wide" information on Indian raw honey prices, contrary to Wuhan's claim. Petitioners contend that Wuhan's argument that the March 2000, *Tribune of India* article relied on by the Department in the *Preliminary Results* is not contemporaneous with the POR as it predates the POR by 21 months, ignores the fact that Wuhan's March 2001, *Tribune of India* article itself predates the POR by nine months. Petitioners state that Wuhan submitted to the record information from the Tiwana Bee Farm and Jallowal Bee Farm reflecting average monthly prices during the POR ranging from a low Rs. 33.5 per kg. in December 2001, to a high of Rs. 52.5 per kg. in May 2002. Petitioners contend that the information it submitted from 11 different Indian producers and consumers of raw honey consist of prices ranging from Rs. 35 to Rs. 90 per kg., as such, the raw honey prices submitted by Wuhan and petitioners are consistent and are corroborative of each other.

Moreover, petitioners argue that the information submitted by Wuhan itself reflects that raw honey prices in India during the POR significantly exceeded the values reported in both of the *Tribune of India* articles. Petitioners reiterate that the Department's inflation of the March 2000, *Tribune of India* price in its *Preliminary Results* using the WPI does not appropriately reflect the increases in raw honey prices as demonstrated by Wuhan's own information. Petitioners argue that because the rate of increase of the POR-specific pricing information on the record is more than seven times greater than the rate at which the Indian WPI increased for a period that is 21 months longer in length, makes clear that inflating a non-contemporaneous price will not properly reflect raw honey prices in India during the POR.

In rebuttal to Wuhan's argument that a newspaper article like the March 2001, *Tribune of India* article is superior in quality, petitioners claim that both *Tribune of India* articles fail to identify a source for the values cited nor state the time period to which the values correspond. According to petitioners, in contrast, the company-specific pricing information submitted by Wuhan and petitioners is contemporaneous with the POR and is of superior quality to either *Tribune of India* articles.

Petitioners contend that the accuracy of the reported prices can be confirmed by the Department by contacting the specific producers and consumers that have reported the prices they obtained or paid during the POR.

In rebuttal to Wuhan's claim that the pricing information submitted by petitioners is "non-public" and that prices are merely "quotes," petitioners argue that the pricing information submitted by petitioners (and by Wuhan) does not consist of price "quotes," in that it reflects actual prices obtained by raw honey producers (or paid by raw honey consumers) for the periods indicated, and not mere offers for sale or purchase.

Petitioners conclude that the Department should rely upon a simple average of the company-specific pricing information placed on the record by Wuhan and petitioners to value raw honey in its final results, as it is clear that this company-specific pricing information is the only source on the record that is contemporaneous with the POR and because it is of a higher quality than the March 2000, *Tribune of India* article relied on by the Department in its *Preliminary Results*.

#### Department's Position:

In valuing factors of production, section 773(c)(1) of the Act instructs the Department to use "the best available information" from the appropriate market economy country. In choosing the most appropriate surrogate value, the Department considers several factors, including the quality, specificity, and contemporaneity of the data. *See, e.g., Garlic from the PRC* and accompanying Issues and Decision Memorandum at Comment 6. As further noted in *Garlic from the PRC*, the Department prefers, whenever possible, to use country-wide data, and only resort to company-specific information when country-wide data is not available. In addition, the Department prefers to rely on publicly-available data. *See Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, and Final Partial Rescission of Antidumping Duty Administrative Review*, 66 FR 20634 (April 24, 2001) and accompanying Issues and Decision Memorandum at Comment 2.

In the *Preliminary Results*, we valued raw honey using an average of the highest and lowest price for raw honey, adjusted for inflation, stated in an article published in *The Tribune of India* on March 1, 2000, entitled, "Apiculture, a major foreign exchange earner" (later republished in *The Agricultural Tribune* on May 1, 2000). In the final results of this review, we continue to value raw honey using the prices reflected in the article published in the March 2000, *Tribune of India*, an Indian newspaper. As in the original investigation, we find that the raw honey price data from the March 2000, *Tribune of India* is the best available surrogate value because it is publicly-available, country-wide data specific to Indian raw honey prices, and it is quality agricultural data.

We find that the values offered by petitioners and respondent do not provide more accurate or

representative alternatives than our methodology. Specifically, the 11 different company-specific surrogate prices and/or cost information submitted by petitioners suffer from inherent weaknesses not present in the prices reflected in the Department's March 2000, *Tribune of India* article, adjusted as described below. As noted above, the Department considers the quality, specificity, and contemporaneity of the data in selecting the most appropriate surrogate value. While petitioners' pricing data is specific to raw honey, the data is less preferable in terms of the other factors considered by the Department for the following reasons: 1) the data is of varying quality in terms of producer type (cooperative, private company, and/or non-market entity), 2) the majority of the pricing data was acquired via unsubstantiated market research and have little or no supporting documentation, 3) certain pricing data may be distorted by non-market forces, and 4) none of the 11 different surrogate values are fully contemporaneous.

Significantly, all pricing information submitted by petitioners is based on the experience of single entities, including cooperatives. Consistent with the original investigation, we rejected petitioners' data based on an Indian honey processing cooperative because we determined that such data represented the experience by a single processor of honey in a particular region of India. Generally, it is the Department's preference to use a publicly-available price that reflects numerous transactions between many buyers and sellers, because the experience of a single producer is less representative of the cost of an input in the surrogate country. See *Steel Concrete Reinforcing Bars from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 66 FR 33522 (June 22, 2001) and accompanying Issues and Decision Memorandum at Comment 5. As above-mentioned, it is the Department's preference to use country-wide data rather than company-specific information. See, e.g., *Original Investigation; Garlic from the PRC* and accompanying Issues and Decision Memorandum at Comment 6. We disagree with petitioners that their proposed average raw honey price is reflective of country-wide data simply because such data reflects prices from a number of individual producers located in major honey-producing regions. Although the submitted data does reflect individual pricing from various regions of the country, nevertheless the overall "averaged" raw honey price submitted by petitioners is mainly based on a combination of prices selected by petitioners. The final average price derived by mixing together data mainly selected by petitioners generates an "average" price that is not necessarily representative of country-wide market prices.

Moreover, we note that much of petitioners' individual pricing data is derived solely from undocumented pricing or cost information quoted by companies or contained in an unsubstantiated market research study prepared by petitioners. Importantly, when faced with a choice between unsubstantiated company-specific data selected by one party on the one hand, and country-wide publicly-available data on the other hand, the Department prefers to rely on publicly-available data when selecting surrogate values. Because petitioners' data, for the most part, consists of undocumented pricing/cost information derived from unsubstantiated market research and we have better data, we have not used petitioners' data. See *Yantai Oriental Juice*. Finally, we note that petitioners' data is not fully contemporaneous with the POR.

As stated above, given a choice between petitioners' unsubstantiated company-specific pricing information and the March 2000, *Tribune of India* article, we find that the surrogate value information from the article is more reliable because it is publicly-available, country-wide data specific to raw honey prices in India.

With respect to the raw honey values submitted by respondent (*i.e.*, Jallowal and Tiwana Bee Farms), we find that although these prices are based upon actual and documented purchase prices from Indian processors, nevertheless, the information is specific only to two honey processors in a particular region of India, and thus do not fairly represent quality, country-wide data. Thus, although we find the purchase prices to be somewhat reflective of raw honey pricing trends in India during the POR, we nevertheless find that they are not the best information available to the Department with which to value the raw honey input because of the limited coverage of the data. Therefore, in accordance with Department's practice, we are not relying on the company-specific raw honey pricing information reflective of the experience of entities in a particular region of India submitted by respondent.

We also disagree with respondent that its March 2001, *Tribune of India* article is the only suitable data on the record. We are unpersuaded by respondent's argument that in the instant case the Department should use the price data contained in its article solely because it is more recent than the price data of the March 2000, *Tribune of India* article relied on by the Department in the *Preliminary Results*. While contemporaneity is one factor considered by the Department in choosing a suitable surrogate value, contemporaneity is not the exclusive factor governing the Department's decision. See *Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Ukraine*, 67 FR 55785 (August 30, 2002) (*Steel Wire Rod from Ukraine*) and accompanying Issues and Decision Memorandum at Comment 1. We also disagree with respondent that its article is of superior quality to the Department's March 2000, *Tribune of India* article. Although respondent's article was published in the same quality publication as the article relied on by the Department, respondent's later article contains internal inconsistencies that undermine its reliability. Specifically, the raw honey price information contained in respondent's article appears to be limited to raw honey prices in the Northern part of India, rather than country-wide honey prices. Moreover, it is not clear whether the raw honey pricing information in respondent's article refers to all raw honey sold in India, or only that sourced from China, Argentina, Germany, and Australia. Finally, as noted by petitioners, the March 2001, *Tribune of India* article submitted by respondent identifies imports from these same countries as the cause of a drop in Indian honey production and honey prices which contradict Indian honey import data submitted by petitioners. As such, we have concerns as to the reliability and quality of respondent's price data from the March 2001, *Tribune of India* article, and thus, have determined to continue to rely on the March 2000, *Tribune of India* article entitled "Apiculture, a major foreign exchange earner" (later republished in *The Agricultural Tribune* on May 1, 2000). We adjusted this raw honey price data using monthly price increases for two Indian honey producers as discussed below. See Attachment 2 of Final FOP Memo for further details.

Therefore, for all the reasons stated above, we have continued to rely on the raw honey values

reported in the March 2000, *Tribune of India* article, as adjusted, for the purposes of valuing raw honey because this is the best information available. Although the information in this article is from a time period several years prior to the POR, we adjusted the data in the preliminary results by the WPI to account for the effects of inflation. Since the preliminary results, however, record information submitted by respondent clearly indicate that inflating the March 2000, *Tribune of India* price data only by the WPI does not appropriately reflect the significant increase in Indian raw honey prices during the POR. Specifically, in reviewing the average raw honey purchase prices from Jallowal and Tiwana Bee Farms, we note that during the POR raw honey prices dramatically increased on a monthly basis in excess of the WPI.

Therefore, we have revised our methodology in these final results for adjusting the March 2000, *Tribune of India* raw honey prices to account for inflation. To account for these significant raw honey price increases, we have inflated the raw honey average price from the March 2000, *Tribune of India* article (*i.e.*, Rs. 35 per kg.) using an inflator derived from documented and verifiable raw honey prices submitted by respondent. Specifically, we relied on the WPI as an inflator for those months when the WPI was representative of inflation of raw honey in India. (*i.e.*, to December 2001, the first month of the POR). For those months when the WPI was not representative of raw honey inflation in India, we instead applied as the monthly inflator the average monthly price increase (percentage) of the raw honey prices submitted by respondent (*i.e.*, average of the POR monthly raw honey purchase prices from the Tiwana and Jallowal Bee Farms). Because the Tiwana and Jallowal Bee Farms' data reflects documented raw honey purchase prices specific to the POR, we adjusted our March 2000, *Tribune of India* article with these data instead of other Indian raw honey pricing information on the record. Although we rejected these same prices as the basis for calculating overall surrogate raw honey values because they are not based on country-wide data, nevertheless we find that the Tiwana and Jallowal Bee Farms' data are the best information available for purposes of inflating the average raw honey value from the March 2000, *Tribune of India* article because they are the only documented raw honey values from actual Indian producers on the record completely contemporaneous with the POR. Therefore, this was the most appropriate data to use as the benchmark for determining the relative change in raw honey prices since the March 2000, *Tribune of India* article. Finally, we calculated a simple average of the adjusted monthly raw honey prices to derive the raw honey surrogate value for the POR. See Final FOP Memo at 2 and Attachment 2.

### **Comment 3: Surrogate Value for Factory Overhead, SG&A, and Profit Ratios**

According to respondent, the Department should not rely on MHPC's financial statement to calculate surrogate ratios for factory overhead, SG&A, and profit, but should instead rely upon the audited financial statements of the Coorg Honey and Wax Producers Cooperative Marketing Society Ltd.'s (Coorg), which respondent provided to the Department. Respondent presents several reasons why the Department should not rely on MHPC's financial statements. First, respondent claims that MHPC's financial statement lacks inventory and consumption values, which are critical to the

Department's calculations. Respondent further claims that the unconventional format of MHPC's financial statement used by the Department in the *Preliminary Results* required that the Department "back into" a consumption figure by multiplying the unit value of purchases times the quantity of production. In particular, respondent argues that MHPC's financial statement does not provide a closing inventory value, which is a critical element in calculating the cost of materials consumed. Respondent contends that the Department's methodology assumes that MHPC has no ending inventory and further, imposes a Last In, First Out (LIFO) valuation of MHPC's raw materials, since it values all production using current purchases without regard to beginning stock value of raw materials. Respondent argues that this methodology does not make sense in the case of a perishable input such as honey, where there would be an incentive to use the oldest raw material first before it degrades. Respondent further argues that the Department's calculation is based on sheer speculation because it is not known whether MHPC uses a LIFO or a First In, First Out (FIFO) method of valuation of MHPC's raw materials.

Respondent reiterates that the lack of data concerning the closing stock renders the entire MHPC financial statement unusable for the purposes of calculating surrogate ratios, since the cost of materials would be based on assumptions rather than data contained within the financial statement. Respondent states that petitioners had earlier requested clarifying information from MHPC in order to derive the value of raw materials consumption. According to respondent, that "clarifying" information yielded impossible results in that the closing stock value provided by petitioners yielded a Rs./kg. value lower than the values of opening stock, purchases, and consumption. Citing *Certain Preserved Mushrooms from the PRC*, respondent notes that the Department rejected a surrogate producer's financial statement because it did not permit the Department to calculate raw materials cost. See *Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255 (December 31, 1998) (*Investigation Mushrooms from the PRC*). In comparison, respondent argues that MHPC's problem is not "tainted" values, as was the case in the investigation of *Mushrooms from the PRC*, but a lack of information with which to value raw materials consumption without resorting to speculation as to MHPC's inventory valuation method.

According to respondent, MHPC's financial statement suffers from other flaws including the large amount for "Profit and Loss Account." Respondent notes that this account appears to be a reserve, which consists of both reserves for contingent liabilities (such as "bad debts" and "charity") and of items that could more appropriately be considered overhead or manufacturing-related expenses. Respondent further states that this account includes Rs. 500,000 paid to beekeepers for non-production due to a disease. Respondent contends that if the Department continues to use the MHPC financial statement, it should add Rs. 500,000 to MHPC's direct manufacturing costs to account for these expenses associated with the raw material. Additionally, according to respondent, certain other clarified expenses included in its June 23, 2003, submission should also be adjusted if the Department continues to use MHPC's

financial data for the final results of this review.<sup>2</sup>

Therefore, for these reasons, respondent asserts that the Department should not use MHPC's financial statement at all to calculate the surrogate ratios. Nevertheless, if the Department does continue to rely on MHPC's financial statement in the final results, respondent argues that the Department must calculate the profit ratio consistent with the profit reported by MHPC. Respondent argues that the Department's methodology to calculate the surrogate profit value cannot be reconciled to MHPC's financial statement as it ignored MHPC's stated net profit figure and inflated MHPC's net profit by over 600 percent. Respondent further argues that because the Department has additional information confirming MHPC's profit that was not available in the antidumping duty investigation, the Department should not follow a methodology which runs contrary to the surrogate producer's stated profit and inappropriately inflates the dumping margins.

Respondent claims that the Department's failure to use MHPC's stated profit runs contrary to the Department's past practice: "in calculating overhead and SG&A, it is the Department's practice to accept data from the surrogate producer's financial statements in toto, rather than performing a line-by-line analysis of the types of expenses included in each category." See *Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form from the People's Republic of China*, 66 FR 49345 (September 27, 2001) and accompanying Issues and Decision Memorandum at Comment 4. Citing to *Tapered Roller Bearing and Parts Thereof, Finished and Unfinished from the PRC*, respondent asserts that the Department confirmed that it uses the surrogate companies' "reported profit." See *Tapered Roller Bearing and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Preliminary Results of 1999-2000 Administrative Review, Partial Rescission of Review, and Notice of Intent Not to Revoke Order in Part*, 66 FR 35937 (July 10, 2001). Respondent argues that, in the instant case, the Department's preliminary calculation methodology is unsupported by record evidence demonstrating that MHPC's stated profit was Rs. 260,217.53.

Additionally, respondent claims that although it had referred to MHPC's financial statement in the past as "audited" due to the presence of the letter at the beginning of the statement, upon closer inspection, the letter is from the Chairman of the cooperative to the members. Thus, respondent states that MHPC's financial statement is not audited as there is no auditor's opinion letter as to the compliance of the MHPC's accounting practices with Indian GAAP.

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<sup>2</sup> Respondent notes that another flaw of MHPC's financial statement is that it shows an amount of Rs. 582,314.62 as "processing expense," which is not clear as to whether the processing was for honey production, fruit canning, or something else entirely.

Respondent argues that for these final results the Department should use the audited Coorg financial statement rather than the unaudited and incomplete MHPC financial statement to calculate the surrogate ratios. Respondent asserts that in contrast to MHPC's financial statement, Coorg's financial statement is pre-faced by a 45-point auditor's opinion. Respondent further asserts that the auditor specifically approved Coorg's closing stock value of Rs. 1,599,082.75, a critical value missing from the MHPC's financial statement.

Respondent contends that when facing a choice between an unaudited financial statement that omits critical information and a comprehensive audited financial statement, the Department should rely upon the audited financial statement in accordance with its practice. *See Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation*, 64 FR 38626 (July 19, 1999) ("although it is not required that the financial statements be audited, the Department has established a clear preference to use audited financial statements when available."). Respondent, citing to *Silicomanganese from Kazakhstan*, claims that the Department was faced with a choice between one company that had an audited financial statement but it was not the producer of identical merchandise, and another company that was a producer of similar merchandise but its financial statement was "incomplete" and lacked an auditor's statement and notes. According to respondent, the Department chose the audited financial statement, despite the fact that the product produced by the company was arguably less similar to the subject merchandise than the product manufactured by the company with the unaudited financial statement. *See Final Determination of Sales at Less Than Fair Value: Silicomanganese from Kazakhstan*, 67 FR 15535 (April 2, 2002) (*Silicomanganese from Kazakhstan*) and accompanying Issues and Decision Memorandum at Comment 3. As in *Silicomanganese from Kazakhstan*, respondent notes that MHPC's financial statement lacks an auditor's opinion or notes, whereas, Coorg's financial statement is audited and contains a verified closing stock value, to enable the Department to calculate the cost of raw materials for the surrogate ratios' denominator. Therefore, respondent argues that the Department should rely on the audited financial statement from Coorg and not use MHPC's financial statement for purposes of the final results.

In conclusion, respondent reiterates that the Department should not use MHPC's financial statement for the final results of this review as MHPC's financial data lacks the critical information necessary to calculate the value of raw materials consumed, which is the very foundation of the Department's ratio calculations. However, respondent asserts that if the Department does use MHPC's financial statement, it should calculate the ratios in accordance with the company's stated net profit, rather than conducting its own reorganization and recharacterization of MHPC's result. Respondent further asserts that if the Department does use MHPC's financial statement, it should make the other modifications identified by Wuhan to correct the preliminary results methodology. Notwithstanding, respondent contends that the Department cannot reasonably continue to rely on MHPC's financial statement when the record now contains a contemporaneous, audited financial statement of another honey producer which does not suffer the fatal flaws of MHPC's financial data.

Respondent concludes that the

Department should therefore use Coorg's financial statement and calculate the ratios in accordance with its adjusted surrogate value ratio calculations. See respondent's case brief dated July 21, 2003 at Exhibit 1.

In rebuttal, petitioners argue that MHPC's financial statement is the only appropriate source of surrogate information on the record, and the Department should continue to calculate surrogate general expenses from that source as it did in the *Preliminary Results*. Petitioners contend that the Department's regulations clearly state that general expenses should be valued based on "information gathered from producers of identical or comparable merchandise in the surrogate country." See section 351.408(c)(4) of the Department's regulations. Based on this regulatory language, petitioners assert that the Department's preference is to rely upon surrogate information from producers of the subject merchandise in the surrogate country. See, e.g., *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-length Carbon Steel Plate from the People's Republic of China*, 62 FR 61964 (November 20, 1997). Moreover, petitioners contend that the Department will "seek information that pertains narrowly as possible to the subject merchandise." See *Final Determination of Sales at Less Than Fair Value: Bulk Aspirin from the People's Republic of China*, 65 FR 33805 (May 25, 2000) (*Bulk Aspirin from the PRC*) and accompanying Issues and Decision Memorandum at Comment 4.

According to petitioners, the Department's precedent reflects two important criteria that will result in deciding not to use a particular company's financial statements in calculating surrogate general expenses. First, petitioners assert that the Department will not rely on financial information from a producer of the subject merchandise to the extent that the company's financial information is distorted as a result of the commingling of information concerning the production of both subject and non-subject merchandise. See, e.g., *Investigation Mushrooms from PRC*. Second, petitioners claim that the Department will not rely on financial information if such information contains significant cost or revenue items that are likely to distort the Department's calculation of surrogate general expenses.

On May 1, 2003, petitioners submitted financial information that it claims to be specifically limited to MHPC's Honey Processing Division. Petitioners assert that because the financial information it provided is limited to operations related to the production of the subject merchandise, it is a preferred surrogate source under the Department's precedent. In contrast, petitioners argue that the surrogate source proposed by Wuhan (i.e., Coorg's financial statement) includes expenses and income items attributable to non-subject merchandise. In particular, petitioners state that Coorg's financial statement include revenues and expenses related to furniture manufacturing, the sale of wood pieces, the sale and production of steel products, and the sale of bullets – all in addition to its production of processed honey. Petitioners note that, for example, Coorg's financial statement submitted by Wuhan states that "honey and steel goods were sold in the show room of Nagara Branch," which accounted for Rs. 1,083,598.30 of Coorg's total sales of Rs. 4,821,847.50 or 22 percent of total sales. Petitioners

assert that Coorg's financial data demonstrate that sales of honey accounted for only 55 percent of the cooperative's total sales, while the information submitted by petitioners concerning MHPC is limited specifically to the operations of MHPC's Honey Processing Division.

Petitioners argue that Wuhan has not supplied the Department with the information that would be needed to adjust Coorg's financial statement to remove the non-subject revenue and expense items. Petitioners note that the costs associated with the production or acquisition of the non-subject merchandise and the revenues derived from their sale are imbedded in and distort the Coorg financial data. Petitioners also argue that the Coorg financial data are likely to be further distorted due to the presence of the significant fixed investments that would be associated with its operations involving the production and sale of steel products, furniture, and other non-subject merchandise, in contrast to the more modest fixed investments associated with honey processing operations.

Moreover, petitioners argue that the Auditor's Report accompanying Coorg's financial statement makes clear that it is not reliable because of a staggering number of unresolved issues and points of concern, including by-law violations and other unacceptable irregularities such as unspecified "loopholes" and the absence of critical financial information not available for auditing purposes.<sup>3</sup> Petitioners assert that there are also discrepancies between the specific funds identified in the Auditor's Report and the funds identified in Coorg's financial statements. Petitioners further claim that neither Coorg's financial statement nor the cost of production schedule reproduced in Exhibit 1 of Wuhan's case brief reports any depreciation expenses. Petitioners argue that a company's failure to expense depreciation in the period in which it accrues clearly violates the matching principle, which provides that expenses should be matched with the revenues they helped create. Petitioners further argue that even if only a portion of Coorg's depreciation expenses are attributable to its honey operations the effect on the expenses would be enormous. Petitioners further note that Coorg does not possess or maintain a suitable system for internal auditing, thereby, reflecting Coorg's lack of internal controls necessary for the preparation of a complete and accurate financial statement.

Lastly, petitioners state that the Auditor's Report identifies the existence of 16 reserve accounts, and indicates that most of the accounts are "still continuing without any procedure during the end of the report." Petitioners claim that the existence of such reserve accounts, many of which are related to expense items, suggests that Coorg had continuing liabilities relating to its operations that may not be reflected in the financial statements, thus necessitating the maintenance of a "reserve" account. Petitioners further claim that these reserve accounts may understate Coorg's true costs of producing processed honey by as much as 44.4 percent. Petitioners contend that since the balances reported for

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<sup>3</sup> Specifically, petitioners note that paragraph 15 of the Auditor's Report indicates that details of governmental loans and subsidies received by Coorg were not available for auditing. Thus, petitioners assert that Coorg's expenses are understated and its income is overstated, and given the extent of the loans and subsidies received by Coorg, the imposition of sanctions could have significant impact on its financial results.

several of the various reserve accounts are substantial and would have a significant impact on Coorg's reported expenses, the Department cannot rely upon the revenue and cost schedules that Wuhan derived from Coorg's financial statement because these calculations contain numerous discrepancies.

In sum, petitioners contend that Coorg's financial statement and the schedules Wuhan derived from them are not reliable. Petitioners reiterate their claims that Coorg's own auditor indicated that he/she had serious concerns with the statements and identified numerous, significant shortcomings in the financial statements. Petitioners argue that because the record clearly demonstrates that those financial statements are not reliable, the Department should not consider them in its final results, but rather should continue to calculate surrogate general expenses from the 2001-2002 Annual Report of the MHPC.

Petitioners further argue that Wuhan clearly misunderstands MHPC's financial data, because the Rs./kg. value of the closing stock is not lower than the values of purchases and consumption. Thus, petitioners assert that contrary to Wuhan's claim, the Department does not lack "critical data {concerning the value of the MHPC's closing stock}, which is the very foundation of the Department's ratio calculations." Petitioners state that Wuhan also attempts to discredit MHPC's financial data by attacking the calculation methodology employed by the Department to derive a raw honey consumption figure in the *Preliminary Results*. According to petitioners, Wuhan misstates the operation of various approaches to inventory accounting because the FIFO and the LIFO methods are accounting methods used to assign costs to inventory. Petitioners state that these methods are not based on the nature of the underlying product. Petitioners note that most companies use LIFO because it more accurately reflects the replacement cost of the product, and tends to reduce a company's income tax burden by increasing the cost of its raw materials, particularly in times of rising prices.

Moreover, petitioners strongly disagree with Wuhan's characterization of honey as perishable product, given that if properly packed and maintained, honey can be held in inventory for several years. Nevertheless, petitioners argue that whether a product is perishable will not impact a firm's decision of whether to employ a LIFO or FIFO methodology because a company that uses the oldest product first is free to assign a cost to that product based on either the FIFO or LIFO method. Thus, petitioners claim, to the extent that a firm sells a perishable product and cannot remove that product from inventory efficiently, that firm will experience spoilage regardless of whether it uses the LIFO method or the FIFO method. Given the rising costs in India and a producer's desire to reduce income taxes, petitioners contend that it is wholly reasonable to assume that an Indian company would use the LIFO method.

Petitioners state that Wuhan had many opportunities throughout this proceeding to contact MHPC in order to refute the raw honey consumption and closing stock figures of the Honey Processing Division. Petitioners further state that the record makes clear that Wuhan did contact the MHPC and receive certain information from the cooperative. However, petitioners claim that Wuhan never submitted any information challenging the accuracy of the honey consumption and closing stock figures of MHPC's Honey Processing Division placed on the record by petitioners. Accordingly, petitioners argue that the Department must conclude that Wuhan was unable to obtain any information from

MHPC indicating that the information concerning MHPC's honey consumption and closing stocks placed on the record by petitioners was in any way incorrect.

Contrary to Wuhan's assertions, petitioners state that MHPC's 2001-02 Annual Report does contain an auditor's report. In fact, petitioners claim that Wuhan placed the auditor's report on the record of this proceeding in its April 18, 2003, submission at Exhibit 1. Moreover, petitioners note that page 10 of MHPC's 2001-2002 Annual Report contains a specific line item reporting the "audit fee" incurred by the MHPC for the audit of its financial statements.

In rebuttal to Wuhan's claim that the Department add the Rs. 500,000 paid to beekeepers due to a disease that attacked the bee colonies ("Thai Sek Brude") to the surrogate calculation of direct manufacturing costs, petitioners assert that this cost is borne by the beekeepers in MHPC's Apiary Division, not MHPC's Honey Processing Division. Thus, petitioners argue that the Rs. 500,000 payment was correctly omitted from the surrogate financial ratios calculated by the Department and petitioners which are specific to MHPC's Honey Processing Division.

Petitioners state that Wuhan makes an erroneous claim regarding the Department's classification of "processing expenses" in the amount of Rs. 582,314.62 in the *Preliminary Results*. Contrary to Wuhan's claim, petitioners assert that the "processing expenses" line item was clearly attributable to MHPC's Honey Processing Division, and the Department accurately attributed the entire amount of "processing expenses" (i.e., Rs. 582,314.62) to the MHPC's direct manufacturing costs in the *Preliminary Results*. According to petitioners, Wuhan failed to add two line-items in the Department's preliminary calculations under "Direct Manufacturing Costs: Processing Expenses" in the amount of Rs. 582,314.62 and "Fuel and Water" in the amount of Rs. 50,686.97. Thus, petitioners argue that the Department is not required to "justify why and how it reduced the amount of processing costs added to MHPC's manufacturing costs," as suggested by Wuhan, because the costs in question were not reduced.

In rebuttal to Wuhan's contention that the Department in the *Preliminary Results* inappropriately inflated MHPC's net profit, petitioners argue that, in fact, the Department's profit value of Rs. 1,589,547.25 is consistent with the actual profit earned by MHPC's Honey Processing Division (i.e., Rs. 1,698,306.38). See, e.g., Petitioners' May 1, 2003, submission at Exhibit 6. Petitioners note that the suggested value of Rs. 260,217.53 by Wuhan is the profit for MHPC as a whole and includes other sources of profit/loss such as its fruit canning division and interest/dividend income. Petitioners claim that Wuhan's argument, therefore, mistakenly contends that MHPC's total profit should be applied to expenses pertaining only to MHPC's Honey Processing Division. Petitioners assert that this approach is methodologically unsound and inconsistent with the Department's practice of using surrogate financial data that pertain as narrowly as possible to the subject merchandise to value general expenses. For this reason, petitioners argue that the Department should ensure that it is comparing apples to apples and, in a manner consistent with its clear practice in this area, apply the profit of MHPC's Honey Processing Division (i.e., Rs. 1,589,547.25) to the corresponding expenses of that

division in calculating a surrogate profit ratio. As stated above, petitioners reiterate that Wuhan has had numerous opportunities throughout this proceeding to contact MHPC officials in order to refute the profit figure reported for the Honey Processing Division.

Petitioners conclude that the Department should reject Wuhan's arguments that it should rely on Coorg's financial statements to calculate surrogate general expenses in the final results, as well as its arguments that the Department must adjust the calculations performed in its *Preliminary Results* in determining surrogate general expenses based upon the operations of MHPC's Honey Processing Division.

Department's Position:

Under a non-market economy methodology, it is the Department's established practice in selecting surrogate data with which to value the factors of production to consider the quality, specificity, and contemporaneity of such data. See *Garlic from the PRC* and accompanying Issues and Decision Memorandum at Comment 6. Moreover, for valuing factory overhead, SG&A, and profit, the Secretary normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country. See 19 CFR 351.408(c)(4).

As an initial matter, the Department agrees with petitioners that the surrogate source proposed by respondent (*i.e.*, Coorg's financial statement) is not the best information available. While Coorg's financial statement is contemporaneous with the POR, we find that it is not the best information in terms of quality or specificity. With regard to quality, as asserted by petitioners, the number of unresolved issues and points of concern mentioned in the Auditor's Report calls into question the reliability and credibility of Coorg's financial statement. In particular, we note that the Auditor's Report prefacing Coorg's financial statement identifies the absence of critical information not available for auditing purposes such as governmental loans and subsidies, and discrepancies between specific funds noted in the Auditor's Report and funds listed in Coorg's financial statements. Moreover, because MHPC's financial data is based on subject merchandise while Coorg's financial data includes a significant amount of non-subject merchandise, we find that MHPC's financial data is more reliable. See *Investigation Mushrooms from PRC*.

Therefore, we are continuing to rely on the financial statements of MHPC in calculating the surrogate ratios for Wuhan's factory overhead expenses, SG&A expenses, and profit for the final results of this review. It is the Department's practice to use financial data that are more narrowly limited to a producer of comparable merchandise than data based on a producer of a wider range of products when the former data are available. See *Synthetic Indigo from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 65 FR 25706 (May 3, 2000) and accompanying Issues and Decision Memorandum at Comment 6; *Final Determination of Sales at*

*Less Than Fair Value: Creatine Monohydrate from the People's Republic of China*, 64 FR 71104 (December 20, 1999). We find that MHPC's financial data are better in terms of the factors relied on by the Department in selecting appropriate Indian surrogate data with which to value financial ratios. Therefore, in accordance with section 773(c)(1)(B) of the Act, we find that MHPC's audited financial statements are the best available information on the record of this review.

Furthermore, we disagree with respondent's argument that the Department must calculate a profit ratio consistent with the profit reported by MHPC. Rather, we agree with petitioners that the profit value referenced by respondent is the profit for MHPC as a whole, and includes other sources of profit and/or loss (*e.g.*, fruit canning division and interest/dividend income), and thus, should not be applied to expenses only pertaining to MHPC's honey processing division. In addition, the net profit value listed in MHPC's financial statement appears to reflect a disbursement of gross profit and accruals recorded in a special profit and loss "reserve account," indicating that the amounts recorded in this account are not actual expenses. Inclusion of these amounts from the profit and loss "reserve account" in our profit calculation would cause us to understate MHPC's actual profit for its honey processing operations. Therefore, in accordance with our determination in the *Original Investigation* and the *Preliminary Results* of this review, we are calculating a profit value without reference to the absolute profit figure listed in the financial statement. See page 3 and Attachment 9 of Final FOP Memo.

Finally, we disagree with respondent's claim that the Department should add Rs. 500,000, allegedly paid to beekeepers for non-production to our calculation of MHPC's direct manufacturing costs because, as stated above, we find that the amounts recorded in the total profit and loss "reserve account" (*i.e.*, Rs. 2,377,500) are not actual expenses. Therefore, we are not considering the profit and loss reserve account in our calculation of surrogate factory overhead and SG&A ratios. However, we agree with respondent that our calculation of the surrogate direct manufacturing costs, factory overhead, and SG&A should be adjusted to reflect certain clarified expenses reported separately from the "reserve account" included in its June 23, 2003, submission (*i.e.*, Rs. 17,977 added to direct manufacturing costs and Rs. 37,378.75 moved from SG&A to factory overhead). We have also noted that MHPC's "audit fee" was actually an educational expense. See Attachment 9 of Final FOP Memo.

#### **Comment 4: Surrogate Value for Coal**

Respondent states that petitioners argue that the Department should use Indian import data to value coal instead of domestic prices from the *Teri Energy Data Directory & Yearbook 2001/2002* (*Teri Data*), the source provided by respondent. Respondent further states that petitioners contend that the *Teri Data* only includes prices from Coal India Limited (CIL), a government-owned company, and that the prices are not contemporaneous with the POR. However, respondent claims that it has provided evidence that the coal industry in India has been deregulated, and that as of January 1, 2000, CIL "was free to fix the prices of such grades of coal in relation to the market prices." See Wuhan's June 23, 2003, submission at Exhibit 5. Therefore, respondent contends that petitioners' assertion that

the domestic coal prices from the *Teri Data* are distorted by market forces is incorrect.

Respondent asserts that the Department has previously stated a preference for using domestic prices from the surrogate country rather than import values. See *Creatine Monohydrate from the People's Republic of China: Final Results of Antidumping Duty Review*, 67 FR 10892 (March 11, 2002) (*AD Review of Creatine Monohydrate from the PRC*) and accompanying Issues and Decision Memorandum at Comment 1. Furthermore, respondent claims that the CIT has addressed this very issue, namely whether to use domestic or imported coal prices. See *Yantai Oriental Juice* at 21,26. According to respondent, the CIT concluded that “it cannot find Commerce’s conclusion that imported data is the ‘best available information’ is supported by the record” because: (1) there is no indication that the domestic Indian coal market was distorted; and (2) there is no indication that the use of imported coal values ‘best approximate the cost incurred’ by the Chinese producers.” See *Yantai Oriental Juice* at 24. Respondent states that the CIT ordered the Department to recalculate the valuation of steam coal using the domestic prices from the *Teri Data* even though the imported value was more contemporaneous. Respondent also states that the Department valued steam coal using the *Teri Data* in the final results of 1999-2001 administrative review of *Certain Non-Frozen Apple Juice Concentrate from the PRC*. See *Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China: Notice of Final Results of 1999-2001 Administrative Review and Partial Rescission of Review*, 67 FR 68987 (November 14, 2002) and accompanying Issues and Decision Memorandum at Comment 1. Similarly, respondent notes that in this case the record shows that Wuhan sources coal domestically. Thus, respondent contends that a domestic price would be the better surrogate value because it most closely represents the actual experience of the PRC producer. However, respondent asserts that if the Department valued coal using the Indian import data, it would actually be using prices of coal from countries not comparable to the PRC, such as Australia and South Africa. Respondent claims that it is contrary to both legal precedent and common sense to value these inputs using a higher import price when a domestic surrogate value exists on the record. Therefore, respondent argues that the Department should value steam coal using the domestic prices on the record consistent with *Yantai Oriental Juice* and its long established practice.

In rebuttal, petitioners claim that the Department should continue to rely on the *Monthly Statistics of the Foreign Trade of India (MSFTI)* to value coal in accordance with its long-standing reliance upon data published in the *MSFTI* to value coal (and other inputs) based on that source’s contemporaneity and accuracy.

Petitioners contend that the domestic prices of steam coal provided in the *Teri Data* (source proposed by respondent) fail to accurately reflect coal prices in the Indian market. Petitioners claim that the *Teri Data* correspond to only a single domestic producer in India, CIL, which is wholly-owned by the Indian government.

According to petitioners, CIL serves a unique domestic purpose under the management of the Indian government and was, until recently, protected from the pricing pressures of the market

experienced by Indian importers of coal and other businesses in the private sector. Petitioners argue that the fact that the Indian government deregulated the coal industry only one year prior to the data cited by Wuhan is indicative of the likely market distortions present in the *Teri Data*. Petitioners further argue that while the Indian government chose to phase in over several years its policy of deregulation for various types of coal, it only concluded this policy on January 31, 2001, a time at which it continued to maintain full ownership and control of CIL. According to petitioners, the significant difference between the artificially low prices reported by CIL and the Indian import prices reflects the distortion resulting from the Indian government's ownership of CIL.

Petitioners claim that the *Teri Data* submitted by Wuhan are also inferior to the *MSFTI* data because they assume an average for selected coal types for the years 2001 and 2002, rather than a more precise month-by-month reporting of the greater coal market, and the *Teri Data* are reflective of coal prices only through January 2001, a date more than ten months prior to the POR. Petitioners argue that the *Teri Data* are not contemporaneous with the POR, and thus, do not provide a contemporaneous perspective on market prices.

Additionally, petitioners claim that Wuhan's assertion that the Department has a preference for using domestic prices over import prices distorts the Department's precedent. Petitioners further claim that Wuhan erroneously contends that the Department's final results in the antidumping review of *Creatine Monohydrate from the PRC* reflect the Department's preference for using domestic prices. Particularly, petitioners argue that contrary to Wuhan's characterization of that proceeding, the Department's Issues and Decision Memorandum clearly states that the "Department does not have an unconditional preference for using domestic prices over import prices to value factors of production." See *AD Review of Creatine Monohydrate from the PRC* and accompanying Issues and Decision Memorandum at Comment 1. Petitioners claim that this memorandum also makes clear that the Department "do{es} not use domestic prices unless they are reported net of taxes . . . {or} where high tariffs are in place and domestic prices are distorted as a consequence, we have used import prices." Petitioners argue that the surrogate source proposed by Wuhan for the Department's use in valuing coal does not meet these basic criteria.<sup>4</sup>

Petitioners conclude that because the domestic prices for coal submitted by Wuhan are subject to market distortions, and thus, are inferior to *MSFTI* data, the Department should continue to rely on the *MSFTI* data to value coal in its final results. Petitioners reiterate that the Department has relied on

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<sup>4</sup> See also *Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty New Shipper Administrative Review*, 63 FR 3085 (January 21, 1998) (*Pure Magnesium from the PRC*) (finding that the respondent has offered no reason for finding that the April 1995-March 1996 coal import price from the Monthly Statistics is "unreliable" and relying on the *MSFTI* data to value coal).

the *MSFTI* data in numerous other proceedings, finding them to be reliable and representative of actual market conditions, in that they accurately report the pricing structure of the broader Indian coal market and are more contemporaneous with the POR.

#### Department's Position:

As noted above under Comment 2, section 773(c)(1) of the Act directs the Department to use the “best information available” from the appropriate market economy country when valuing the factors of production in a non-market economy case. The Department’s regulations and preamble further make clear that the Department normally makes this determination, using “publicly-available information” that is reflective of “numerous transactions between many buyers and sellers.” See *Preamble* to the Department’s regulations, 62 FR 27296, 27367 (May 19, 1997).

In the preliminary results of this review, we relied on the *MSFTI* to value coal. We find that the *MSFTI* data is the best available data because it is quality, country-wide data specific to steam coal prices imported into India during the POR, and is representative of competitive market prices. Consistent with our decision in *Pure Magnesium from the PRC*, we find that respondent has offered no reason for finding the *MSFTI* as an unreliable surrogate source. See *Pure Magnesium from the PRC*. Therefore, we continue to rely on Indian import data from *MSFTI* as a surrogate to value the coal input in the final results of this review as it is country-wide, publicly-available data. Further, as noted in the *AD Review of Creatine from the PRC*, the Department does not have an unconditional preference for using domestic prices over import prices to value factors of production. See also *Steel Wire Rod from Ukraine* and accompanying Issues and Decision Memorandum at Comment 1. Moreover, we find that the *Teri Data* is derived from a single producer in India, CIL. See *Final Determination of Sales at Less Than Fair Value: Barium Carbonate from the People’s Republic of China*, 68 FR 46577, (August 6, 2003) and accompanying Issues and Decision Memorandum at Comment 2 (“Regarding the TERI data, . . . We share CPC’s concern that the price information appears to be based on one company’s data and it is not clear on what the listed prices are based.”). As noted above, it is the Department’s preference to use country-wide data whenever possible and only resort to the use of company-specific rates when country-wide data is not available. See *Garlic from the PRC* and accompanying Issues and Decision Memorandum at Comment 6.

#### **Comment 5: Surrogate Value for Electricity**

Respondent claims that the price from the International Energy Agency (IEA) used by the Department in its *Preliminary Results* to value electricity is not contemporaneous to the POR. Respondent states that it provided contemporaneous electricity rates published by the Planning

Commission (Power and Energy Division) Government of India (Planning Commission).

Respondent asserts that the Department has a long-standing practice to use contemporaneous data. *See, e.g., Final Determination of Sales at Less Than Fair Value: Lawn and Garden Steel Fence Posts from the People's Republic of China*, 68 FR 20373 (April 25, 2003). Accordingly, respondent claims that the Department should adhere to its normal practice and use the electricity rates from the Planning Commission, as they are more contemporaneous than the IEA data. Furthermore, respondent asserts that the Department has used this source to value electricity in recent determinations. *See, e.g., Preliminary Determination of Sales at Less Than Fair Value: Refined Brown Aluminum Oxide (Otherwise known as Refined Brown Artificial Corundum or Brown Fused Alumina) from the People's Republic of China*, 68 FR 23966 (May 6, 2003).

Petitioners argue that respondent's argument that the Department should rely on the source it proposes as it is more contemporaneous with the POR, overlooks that the Department has relied upon data reported by the IEA to value electricity in numerous proceedings based upon its reliability, consistency, and accuracy, and has a well-established practice of using the IEA data to calculate electricity prices in India. According to petitioners, in the investigation involving *ARG from the PRC*, the Department relied upon the IEA data to value electricity and declined to use the same surrogate source identified by respondent in this proceeding. *See Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields from the People's Republic of China*, 67 FR 6482 (February 12, 2002) (*ARG from the PRC*) and accompanying Issues and Decision Memorandum at Comment 7. Petitioners claim that the Department reached this decision based on its determination that the country-wide rates available in the IEA source represented a composite of electricity consumption in India that could be adjusted to be fully contemporaneous with the period of investigation. *See ARG from the PRC* and accompanying Issues and Decision Memorandum at Comment 7. Petitioners also claim that the Department declined to use the very same surrogate source proposed by Wuhan in *Bulk Aspirin from the PRC*. *See Bulk Aspirin from the PRC* and accompanying Issues and Decision Memorandum at Comment 6. Petitioners contend that the Department's precedent reflects an established practice of relying on the IEA data as the best available public source as it utilizes international statistical standards mandated by its publisher. Petitioners conclude that the record provides no rationale for the Department to "depart from its normal methodology" of relying on the IEA data as a surrogate value source, and therefore, as it did in *Bulk Aspirin from the PRC* and *ARG from the PRC*, the Department should reject Wuhan's proposed surrogate source in valuing electricity in its final results.

#### Department's Position:

We agree with petitioners. In accordance with our past determinations, because the electricity value in the IEA is a nation-wide figure, we continue to find that it is the most appropriate surrogate for basic inputs such as electricity rather than the rates published by the Planning Commission (Power and

Energy Division), a Indian government agency. *See, e.g., ARG from the PRC* and accompanying Issues and Decision Memorandum at Comment 7; *Preliminary Results of Administrative Review: Natural Bristle Paintbrushes and Brush Heads from the People's Republic of China*, 68 FR 11041 (March 7, 2003), in which the Department valued electricity using rates published by the IEA. *See Final Results of Administrative Review: Natural Bristle Paintbrushes and Brush Heads from the People's Republic of China*, 68 FR 31683 (May 28, 2003). Moreover, the electricity tariffs indicated in the *Annual Report (2001-02) on The Working of State Electricity Boards and Electricity Departments*, published by the Planning Commission, appear to benefit from government subsidization. Accordingly, we continue to use the IEA electricity rate, as adjusted for inflation, in the final results of this review.

#### **Comment 6: Exclusion of Certain Import Data in Calculating Certain Surrogate Values**

Respondent contends that if the Department continues to rely on Indian import statistics to value coal, then it should include into the equation imports from Indonesia, Korea, and Thailand that were previously excluded by the Department based on a “reason to believe or suspect” that Indonesian exports may benefit from non-specific export subsidies. Respondent notes that the Department also excluded data for the same reason in valuing paint and beeswax.

Citing two recent decisions of the CIT, respondent asserts that the Department must have specific evidence on the record supporting a “reason to believe or suspect” that an input value may be distorted by reason of export subsidies. *See, e.g., China National Machinery Import and Export Corporation v. United States*, Slip Op. 03-16 (February 13, 2003) (CMC), and *Luoyang Bearing Factory v. United States*, 27 CIT, Slip Op. 03-41 (April 14, 2003).

Respondent asserts that neither petitioners nor the Department has placed any evidence on the record justifying exclusion of import data from certain countries based on a “reason to believe or suspect” that such imports may benefit from non-specific export subsidies. Furthermore, respondent claims that neither the petitioners nor the Department has established that coal, paint, and beeswax benefit from non-specific export subsidies from Indonesia. Therefore, for the final results, the Department must either (1) add back imports from Indonesia and any other imports that were excluded by the “reason to believe or suspect” analysis, or (2) justify continued exclusion of the same in accordance with the rulings of the CIT.

In rebuttal to respondent’s contention, petitioners claim that the Department’s Issues and Decision Memorandum prepared in connection with its investigation of *ARG from the PRC* makes clear that the Department will omit information on imports from Indonesia, Korea, and Thailand in its surrogate value calculations based upon its determination that those governments provide distortive, non-specific export subsidies to companies doing business in those three countries. *See ARG from the PRC* and accompanying Issues and Decision Memorandum at Comment 1. Petitioners contend that the Department should continue to correctly deduct the import values of these countries from its surrogate value calculations for coal, paint, and beeswax in order to accurately account for these distortive subsidies in its final results.

Department's Position:

When valuing factors of production, the Department must avoid prices which it has a “reason to believe or suspect may be . . . subsidized.” We agree with petitioners that it is the Department’s established practice when relying on Indian import data for surrogate valuation to exclude import data from

Indonesia, Korea, and Thailand on the basis that such data may reflect broadly available, non-industry specific export subsidies. *See ARG from the PRC* and accompanying Issues and Decision Memorandum at Comment 1. As noted in *ARG from the PRC*, each of these countries maintains broadly-available, non-industry specific export subsidies that may benefit all exporters to all markets. Therefore, we will not use export prices from Indonesia, Korea, and Thailand, either as market economy purchases or import statistics into India, the surrogate country. Accordingly, for these final results, we continue to omit import data from Indonesia, Korea, and Thailand from our surrogate value calculations for certain factors of production (*i.e.*, coal, paint, and beeswax).

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final antidumping margin and the final results of this new shipper review in the *Federal Register*.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

\_\_\_\_\_  
James J. Jochum  
Assistant Secretary  
for Import Administration

\_\_\_\_\_  
Date