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NSR: 12/01/2014-11/30/2015
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November 29, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results of the Antidumping Duty New Shipper Review of Honey from the People's Republic of China: Shanghai Sunbeauty Trading Co. Ltd.

SUMMARY

In response to a December 17, 2015 request from Shanghai Sunbeauty Trading Co. Ltd. ("Sunbeauty"),[1] the Department of Commerce ("the Department") is conducting a new shipper review ("NSR") of the antidumping duty order on honey from the People's Republic of China ("PRC") for the period of review December 1, 2014 to November 30, 2015.[2] As discussed below, after analyzing the information provided by parties and gathered by the Department, the Department preliminarily determines that based on the totality of the circumstances the sales subject to this NSR are non-bona fide pursuant to section 75l(a)(2)(B)(iv) of the Tariff Act of 1930, as amended ("the Act"). As such, the Department is preliminarily rescinding this NSR for Sunbeauty.

If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 90 days from the date of publication of this notice, pursuant to section 751(a)(2)(B)(iv) of the Act.

Interested parties are invited to comment on the preliminary results of this review. We intend to issue the final results of the review no later than 90 days from the date the preliminary results are issued, pursuant to section 751(a)(2)(B)(iv) of the Act.

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[1] Letter to the Secretary from Shanghai Sunbeauty Trading Co., Ltd., regarding, "Honey from the People's Republic of China: Request for New Shipper Review," dated December 17, 2015 ("Request for NSR").
[2] See Honey from the People's Republic of China: Initiation of Antidumping Duty New Shipper Review; 2014-2015, 81 FR 5710 (February 3, 2016) ("Initiation Notice").

BACKGROUND

In response to a December 17, 2015, request from Sunbeauty,[3] on February 3, 2016, the Department published notice of initiation of a new shipper review of honey for the period December 1, 2014 to November 30, 2015.[4] On June 14, 2016, the Department extended the deadline for issuing the preliminary results by 120 days to November 30, 2016.[5]

The Department sent the NSR antidumping duty questionnaire to Sunbeauty on February 3, 2016,[6] to which it responded in a timely manner.[7] Between March 2016 and August 2016, the Department issued supplemental questionnaires to Sunbeauty, to which it responded in a timely manner.[8] Petitioner submitted comments on Sunbeauty's questionnaire responses between March and September 2016.[9] Sunbeauty submitted rebuttal comments to Petitioner's comments between March and September 2016.[10] On April 14, 2016, the Department rescinded the concurrent administrative review for this segment.[11]

SCOPE OF THE ORDER

The products covered by the 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 the order is currently classifiable under subheadings 0409.00.00, 1702.90.90 and 2106.90.99 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under order is dispositive.

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[3] See Request for NSR.
[4] See Initiation Notice.
[5] See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through James C. Doyle, Director, Office V, Antidumping and Countervailing Duty Operations "Honey from the People's Republic of China: Extension of Deadline for Preliminary Results of New Shipper Review" (June 14, 2016).
[6] See Letter to Shanghai Sunbeauty Co., Ltd. from Catherine Bertrand, Program Manager, Office V, regarding, New Shipper Questionnaire, dated February 3, 2016.
[7] See Letter to the Secretary from Shanghai Sunbeauty Trading Co., Ltd., regarding, "Honey from the People's Republic of China: Shanghai Sunbeauty Section A Response," dated March 2, 2016; Letter to the Secretary from Shanghai Sunbeauty Trading Co., Ltd., regarding, "Honey from the People's Republic of China: Response to Importer-Specific Questions," dated March 2, 2016.
[8] See, e.g., Letter to Shanghai Sunbeauty Co., Ltd., regarding, "Antidumping Duty New Shipper Review of Honey from the People's Republic of China—Supplemental Section AC Questionnaire," dated July 7, 2016.
[9] Petitioner is the American Honey Producers Association and Sioux Honey Association. See, e.g., Letter to the Secretary from Petitioners, regarding, "Honey from the People's Republic of China – Petitioners' Submission of New Factual Information to Rebut, Clarify, or Correct, Information Contained in Sunbeauty's Importer-Specific Questionnaire," dated August 8, 2016.
[10] See, e.g., Letter to the Secretary from Shanghai Sunbeauty Trading Co., Ltd., regarding, "Honey from the People's Republic of China: Rebuttal Comments on CBP Entry Documentation," dated March 28, 2016.
[11] Honey from the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2014-2015, 81 FR 22049 (April 14, 2016).

DISCUSSION OF THE METHODOLOGY

Section 751(a)(2)(B)(iv) of the Act was recently amended[12] to set forth the criteria the Department will examine to determine if sales, such as the sales by Jingmei under review in this new shipper review, are bona fide. Any weighted average dumping margin determined in a new shipper review shall be solely based on bona fide sales during the period of review.[13] In evaluating whether the sales in a NSR are commercially reasonable or typical of normal business practices, and therefore bona fide, the Department considers, "depending on the circumstances surrounding such sales":

> (I) the prices of such sales; (II) whether such sales were made in commercial quantities; (III) the timing of such sales; (IV) the expenses arising from such sales; (V) whether the subject merchandise involved in such sales was resold in the United States at a profit; (VI) whether such sales were made on an arms-length basis; and (VII) any other factor {it} determines to be relevant as to whether such sales are, or are not, likely to be typical of those the exporter or producer will make after completion of the review.[14]

Although some bona fide issues may share commonalities across various Department cases, the Department examines the bona fide nature of a sale on a case-by-case basis, and the analysis may vary with the facts surrounding each sale. Accordingly, the Department considers a number of factors in its bona fides analysis, "all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise."[15] In TTPC, the Court of International Trade ("CIT") affirmed the Department's decision that any factor which indicated that the sale under consideration is not likely to be typical of those which the producer will make in the future is relevant,[16] and found that the weight given to each factor investigated will depend on the circumstances surrounding the sale.[17] Finally, in New Donghua, the CIT affirmed the Department's practice of evaluating the circumstances surrounding a new shipper review sale; so that a respondent does not unfairly benefit from an atypical sale and obtain a lower dumping margin than the producer's usual commercial practice would dictate.[18] The Department's practice makes clear that the Department will examine objective, verifiable factors to ensure that a sale is not being made to circumvent an antidumping duty order. [19] Thus, a respondent is on notice that it is unlikely to establish the bona fides of a sale merely by claiming to have sold in a

[12] See Section 433 of the Trade Facilitation and Trade Enforcement Act of 2015, Pub. Law 114-125 (Feb. 24, 2016) (adding a new section 751(a)(2)(B)(iv) entitled, "Determinations based on bona fide sales").
[13] Section 751(a)(2)(B)(iv) of the Act.
[14] Id.
[15] See Hebei New Donghua Amino Acid Co., Ltd. v. United States, 374 F. Supp. 2d 1333, 1342 (CIT 2005) ("New Donghua") (citing Fresh Garlic from the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review, 67 FR 11283 (March 13, 2002)).
[16] See Tianjin Tiancheng Pharmaceutical Co. v. United States, 366 F. Supp. 2d 1246, 1250 (CIT 2005) ("TTPC").
[17] Id. at 1263.
[18] See New Donghua, 374 F. Supp. 2d at 1344.
[19] Id. at 1339.

manner representative of its future commercial practice.[20] Where the Department finds that a sale is not bona fide, the Department will exclude the sale from its export price calculations.[21] Based on the Department's analysis of the information provided by Sunbeauty, as well as information obtained from CBP, we have preliminarily determined that Sunbeauty's sales under review are not bona fide transactions. Because these transactions involve business proprietary information, a full discussion of our preliminary findings is set forth in the Sunbeauty Bona Fides Memo.[22] As such, the Department preliminarily finds that we cannot rely on these sales to calculate a dumping margin, and, therefore, there are no sales on which we can base this review. Consequently, we are preliminarily rescinding this review.[23]

RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

☒	☐
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Agree	Disagree

11/30/2016

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Signed by: PAUL PIQUADO

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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[20] Id.
[21] See TTPC, 366 F. Supp. 2d at 1249.
[22] See Sunbeauty Bona Fides Memo.
[23] See, e.g., TTPC, 366 F. Supp. 2d at 1249.