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June 29, 2017

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Rescission of the 2015-2016 Antidumping Duty New Shipper Review and Preliminary Results of the 2015-2016 Administrative Review: Honey from the People's Republic of China:

SUMMARY

The Department of Commerce (the Department) aligned the 2015-2016 new shipper review of the antidumping duty (AD) order on honey from the People's Republic of China (PRC) with the 2015-2016 administrative review of the same order covering the same period of review (POR), and is, therefore, conducting these reviews concurrently. The new shipper review covers Jiangsu Runchen Agricultural/Sideline Foodstuff Co., Ltd. (Jiangsu Runchen). The administrative review covers one mandatory respondent exporter of subject merchandise, Shanghai Sunbeauty Trading Co, Ltd. (Sunbeauty). The POR for the administrative review and new shipper review is December 1, 2015, through November 30, 2016.

As discussed below, after analyzing the information provided by parties and gathered by the Department, the Department preliminarily determines that we are unable to analyze fully the totality of the circumstances surround the sales subject to this new shipper review pursuant to section 751(a)(2)(B)(iv) of the of the Tariff Act of 1930, as amended (the Act), because the record lacks critical information necessary to determine whether Jiangsu Runchen's sales were made in a *bona fide* manner. The Department also finds that, consistent with section 751(a)(2)(C) of the Act, Sunbeauty does not qualify for a separate rate and should be treated as part of the PRC-wide entity, because it had no reviewable entries of subject merchandise.

If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. Unless the deadline is extended, we expect to issue the final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

BACKGROUND

On December 1, 2016, the Department published a notice of opportunity to request an AR of the AD order on honey from the PRC for the POR.[1] On December 28, 2016, Sunbeauty requested that the Department conduct an administrative review of the sales of subject merchandise exported by Sunbeauty during the POR.[2] On January 3, 2017, the American Honey Producers Association and Sioux Honey Producers Association (collectively, the petitioners) requested that the Department conduct an administrative review of three producers or exporters of subject merchandise, Jiangsu Runchen, Shayang Xianghe Food Co., Ltd. (Shayang Xianghe), and Sunbeauty.[3] On January 26, 2017, prior to the initiation of the administrative review, the petitioners withdrew their request for an administrative review of Jiangsu Runchen.[4]

On February 13, 2017, based on the timely requests for administrative review, the Department initiated an administrative review of two exporters/producers, Shayang Xianghe and Sunbeauty.[5] On February 28, 2017, the petitioners withdrew their request for Shayang Xianghe.[6] As a result, the Department rescinded the review with respect to Shayang Xianghe.[7]

On February 3, 2017, in response to a request from Jiangsu Runchen, the Department published notice of initiation of a new shipper review of honey for the period December 1, 2015, to November 30, 2016.[8] On February 15, 2017, the Department aligned the new shipper review of honey from the PRC with the concurrent administrative review of honey from the PRC.[9]

The Department issued the new shipper review AD questionnaire to Jiangsu Runchen on February 3, 2017.[10] The Department issued the administrative review AD questionnaire to Sunbeauty on February 13, 2017.[11]

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[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 81 FR 86694 (December 1, 2016).

[2] *See* Letter to the Secretary from Sunbeauty re: Request for Administrative Review; 2015-2016, dated December 28, 2016 (Sunbeauty Request for AR).

[3] *See* Letter to the Secretary from Petitioners re: Request for Administrative Review; 2015-2016, dated January 3, 2017 (Petitioners' Request for AR).

[4] *See* Letter to the Secretary from Petitioners re: Petitioners' Withdrawal of Request for Administrative Review of Jiangsu Runchen Agricultural/Sideline Foodstuff Co., Ltd., dated January 26, 2017.

[5] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 10457, 10460 (February 13, 2017) (*AR Initiation Notice*); *see also* Letter to the Secretary from Petitioners re: Petitioners' Withdrawal of Request for Administrative Review of Jiangsu Runchen Agricultural/Sideline Foodstuff Co., Ltd., dated January 26, 2017.

[6] *See* Letter to the Secretary from Petitioners re: Petitioners' Withdrawal of Request for 2015/2016 Administrative Review, in Part, dated February 28, 2017.

[7] *See Honey from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 14503 (March 21, 2017).

[8] *See Honey from the People's Republic of China: Initiation of Antidumping Duty New Shipper Review; 2015-2016*, 82 FR 9192 (*NSR Initiation Notice*); *see also* Letter to the Secretary from Jiangsu Runchen re: Request for New-Shipper Review, dated December 23, 2017 (Request for NSR).

[9] *See* Memorandum regarding: Alignment of the New Shipper Review of Jiangsu Runchen, dated February 15, 2017.

[10] *See* Department Letter re: New Shipper Questionnaire, dated February 3, 2017 (Initial New Shipper AD Questionnaire).

[11] *See* Department Letter re: Administrative Review Questionnaire, dated February 13, 2017 (Initial Administrative Review AD Questionnaire).

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, 2106.90.99, 0409.00.0010, 0409.00.0035, 0409.00.0005, 0409.00.0045, 0409.00.0056, and 0409.00.0065 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under the order is dispositive.

Also, included in the scope are blends of honey and rice syrup, regardless of the percentage of honey contained in the blend.

Scope Rulings made between July 1, 2012, and September 30, 2012; Requestor: The American Honey Producers Association and the Sioux Honey Association; blends of honey and rice syrup, regardless of the percentage of honey they contain, are later-developed merchandise that are within the scope of the antidumping duty order; August 21, 2012.

DISCUSSION OF THE METHODOLOGY

A. Jiangsu Runchen's Questionnaire Responses

As mentioned above, the Department issued the Initial New Shipper Review AD Questionnaire to Jiangsu Runchen on February 3, 2017.[12] The cover letter of the Department's questionnaire includes instructions for filing documents in ACCESS, the Department's electronic filing system.[13] Specifically, the Department's questionnaire cover letter notes: "An electronically filed document must be received successfully *in its entirety* by {. . .} ACCESS, by 5 p.m. Eastern Time (ET) on the established deadlines."[14] Additionally, the Department's questionnaire cover letter provides the procedure for requesting an extension of time and the consequences for failing to timely request an extension and/or submit the requested information:

> "If you are unable to respond completely to every question in the attached questionnaire by the established deadline, or are unable to provide all requested supporting documentation by the same date, you must notify the official in charge and submit a request for an extension of the deadline for all or part of the questionnaire response. If you require an extension for only part of your response, such a request should be submitted separately from the portion of your response filed under the current deadline. Statements included within a questionnaire response regarding a respondent's ongoing

[12] *See* Initial New Shipper Questionnaire.
[13] *Id.*
[14] *Id.* (emphasis added).

> efforts to collect part of the requested information, and promises to supply such missing information when available in the future, do not substitute for a written extension request. Section 351.302(c) of the Department's regulations requires that all extension requests be in writing and state the reasons for the request. Any extension granted in response to your request will be in writing; otherwise the original deadline will apply.
>
> If the Department does not receive either the requested information or a written extension request before 5 p.m. ET on the established deadline, we may conclude that your company has decided not to cooperate in this proceeding. The Department will not accept any requested information submitted after the deadline. As required by section 351.302(d) of our regulations, we will reject such submissions as untimely. *Therefore, failure to properly request extensions for all or part of a questionnaire response may result in the application of partial or total facts available, pursuant to section 776(a) of the Act, which may include adverse inferences, pursuant to section 776(b) of the Act.*"[15]

On February 17, 2017, the Department received a timely extension request from Jiangsu Runchen to extend the deadline for it to respond to the Department's questionnaire.[16] On February 24, 2017, the Department extended the deadline for Jiangsu Runchen to respond to section A of the Department's questionnaire by 5:00 p.m. ET on March 3, 2017, and sections C/D of the Department's questionnaire by 5:00 p.m. ET on March 20, 2017.[17]

On March 3, 2017, Jiangsu Runchen submitted its response to the Department's Section A Questionnaire, in part.[18] On March 7, 2017, the Department received an untimely request from Jiangsu Runchen to extend the deadline to the Department's section A questionnaire for the partial filing of one exhibit under 19 CFR 351.302(b).[19] Therein, Jiangsu Runchen submitted the exhibit for which it requested the extension.[20]

Section 351.302(b) of the Department's regulations grants the Secretary the authority to extend time limits unless expressly excluded by statute, but requests for an extension of a time limit are governed by 19 CFR 351.302(c). As provided in 19 CFR 351.302(c), the Department will only grant an untimely extension request under "extraordinary circumstances," which is an unexpected event that could not have been prevented if reasonable measures had been taken and that precludes a party or its representative from timely filing an extension request through all reasonable means. In its request, Jiangsu Runchen argued good cause existed to accept its late submission, because the exhibit was mistakenly left out during the compiling process which it undertook to meet the filing size restrictions placed on documents in ACCESS.[21] This post-deadline explanation for why Jiangsu Runchen did not fully respond to the Department's ection A questionnaire failed to meet, or even address, the "extraordinary circumstances" standard as

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[15] *Id.* (emphasis added).
[16] *See* Letter to the Secretary from Jiangsu Runchen re: Waiving of Time Limits of New Shipper Review, dated February 17, 2017.
[17] *See* Memorandum regarding Jiangsu Runchen Questionnaire Extension, dated February 24, 2017.
[18] *See* Jiangsu Runchen's March 3, 2017 Section A Questionnaire Response (Jiangsu Runchen March 3, 2017 AQR).
[19] *See* Department Letter re: Rejection of Respondent's Untimely Extension Request, dated March 8, 2017.
[20] *Id.*
[21] *Id.*

outlined in 19 CFR 351.302(c).[22] As such, the Department denied Jiangsu Runchen's untimely extension request and rejected the exhibit submitted with its request as untimely filed new factual information.[23]

On March 17, 2017, the petitioners filed comments on Jiangsu Runchen's incomplete section A response, noting that Jiangsu Runchen's failure to provide essential documents in a review the company itself requested is particularly egregious.[24] Nonetheless, the Department issued Jiangsu Runchen a supplemental section A questionnaire (Supp. A) on March 17, 2017, providing Jiangsu Runchen with an additional opportunity to submit the previously untimely filed exhibit.[25] Jiangsu Runchen timely responded to the Department's Supp. A.[26]

On March 20, 2017, Jiangsu Runchen submitted the public version of its section C/D response after 5:00 p.m.[27] At 5:03 p.m. on March 20, 2017, the Department received a phone call from counsel for Jiangsu Runchen informing the Department that the public version of its section C/D response had not been uploaded at the time of the call.[28] Counsel for Jiangsu Runchen additionally explained that she had called the ACCESS help desk, which informed her there were no system-wide problems with ACCESS.[29] On March 21, 2017, the Department confirmed that counsel for Jiangsu Runchen called the ACCESS help desk and that during that phone call was informed there were no system-wide problems with ACCESS.[30] As such, the Department determined that the public version of Jiangsu Runchen's section C/D response was untimely filed new factual information and, therefore, could not be considered by the Department or retained on the official record of the proceeding, pursuant to 19 CFR 351.302(d).[31]

Section 777(b)(1)(B) of the Act and 19 CFR 351.304 state that a person filing a submission that contains information for which business proprietary treatment is claimed must file a public version of the submission and that non-conforming submissions will be rejected. Because 19 CFR 351.302 necessitated that the Department reject the public version of Jiangsu Runchen's section C/D response, Jiangsu Runchen's section C/D response is non-conforming in its entirety and, therefore, the Department was obligated to reject the business proprietary version of Jiangsu Runchen's section C/D response from the record. Thus, on March 23, 2017, the Department rejected and removed from the record the entirety of Jiangsu Runchen's late section C/D response, pursuant to 19 CFR 351.104(a)(2)(iii).[32]

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[22] *Id.*
[23] *Id.*
[24] *See* Letter to the Secretary from Petitioners re: Petitioners' Comments on Jiangsu Runchen's Failure to Provide Documents Critical to the Department's *Bona Fides* Analysis, dated March 17, 2017.
[25] *See* Department Letter re: First Supplemental Questionnaire for Jiangsu Runchen, dated March 17, 2017.
[26] *See* Jiangsu Runchen's April 3, 2017 First Supplemental Questionnaire Response (Jiangsu Runchen April 3, 2017 SQR) (Jiangsu Runchen's April 3, 2017 SQR).
[27] *See* Department Letter re: Rejection of New Shipper's Untimely Section C/D Submission, dated March 23, 2017 (Section C/D Rejection Letter).
[28] *See* Memorandum regarding Phone Call with Counsel for Jiangsu Runchen about Late C/D Submission, dated March 23, 2017 (Phone Call Memo).
[29] *Id.*
[30] *Id.*
[31] *See* Section C/D Rejection Letter.
[32] *Id.*

On April 3, 2017, Jiangsu Runchen filed comments on the Department's rejection of its untimely filed section C/D questionnaire response and an untimely request to extend the deadline for Jiangsu Runchen to respond to the Department's section C/D questionnaire under 19 CFR 351.302(c).[33] In their April 13, 2017 extension request, the petitioners argued that the Department should find that Jiangsu Runchen has failed to cooperate to the best of its ability with the Department's deadlines by twice failing to submit timely information in this review and that the Department should, therefore, apply adverse facts available.[34]

On April 17, 2017, the Department denied Jiangsu Runchen's untimely extension request because Jiangsu Runchen failed to meet the "extraordinary circumstances" requirement pursuant to 19 CFR 351.302(c).[35] In its requests, Jiangsu Runchen reiterated that it encountered issues with ACCESS in uploading its submission and should, therefore, be granted an extension of time to submit its section C/D questionnaire response.[36] Specifically, Jiangsu Runchen provided that ACCESS was running slowly on March 20, 2017, and it was not reasonably foreseeable that a submission containing links would be incompatible with ACCESS, necessitating counsel to remove the links before uploading, thereby lengthening the uploading process.[37] Again, Jiangsu Runchen's apparent issues with ACCESS did not constitute extraordinary circumstances, which would have precluded Jiangsu Runchen from filing a timely extension request, because there were no system-wide issues with ACCESS at the time as documented in the Department's Phone Call Memo.[38] Additionally, counsel for Jiangsu Runchen had reasonable notice that PDF documents cannot be uploaded if they contain links,[39] and finally, counsel waited until after the deadline to contact the Department despite, per its request, apparently encountering said difficulties before the deadline.[40]

In addition to the issues raised regarding ACCESS, Jiangsu Runchen claimed additional extraordinary circumstances in its untimely extension requests. First, counsel for Jiangsu Runchen provided that, despite concerns over completing the response on time, Jiangsu Runchen felt a timely extension request would be seen by the Department as failing to cooperate, as it would have been its second request.[41] Additionally, Jiangsu Runchen stated that its sales manager's father passed away on March 16, 2017, and its accountant's father was hit by a car the weekend of March 18, 2017, necessitating that both employees take time away from the

[33] *See* Letter to the Secretary from Jiangsu Runchen re: Comments on Department's Memorandum on Rejection of New Shipper's Untimely Section C/D Submission and Request for Reconsideration, dated April 3, 2017 (Comments and Request for Reconsideration); Letter to the Secretary from Jiangsu Runchen re: Second Request for Extension to File Response, dated April 3, 2017 (Second Extension Request).
[34] *Id.*
[35] *See* Department Letter re: Denial of Respondent's Untimely C/D Extension Requests, dated April 17, 2017 (Denial of Untimely C/D Extension Request).
[36] *See* Comments and Request for Reconsideration at 2-4 and 9-11; *see also* Second Extension Request.
[37] *Id.*
[38] *See* Denial of Untimely C/D Extension Request; *see also* Phone Call Memo.
[39] *See* Denial of Untimely C/D Extension Request; *see also* Initial New Shipper Questionnaire at Cover Letter (citing ACCESS, "Handbook on Electronic Filing Procedures, Version 3.5," dated June 27, 2016 *available at* https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf).
[40] *See* Denial of Untimely C/D Extension Request; *see also* Phone Call Memo; Comments and Request for Reconsideration at 10; Second Extension Request.
[41] *See* Denial of Untimely C/D Extension Request; *see also* Comments and Request for Reconsideration at 10; Second Request for Extension to File Response.

company and, thus, could not help prepare the response.[42] Here, too, the Department found Jiangsu Runchen's claims unpersuasive. Jiangsu Runchen's erroneous belief that a second timely extension request would be considered a failure to cooperate *per se* fails to meet the extraordinary circumstances standard.[43] Additionally, although Jiangsu Runchen's explanation of employee absences reflects difficulty with preparing the questionnaire response, it does not demonstrate an explanation of why an extension request could not have been timely filed before the March 20, 2017, deadline.[44]

As noted above, Jiangsu Runchen, had, early in the review, requested both a timely and untimely extension request prior to the deadline for its section C/D response.[45] These examples demonstrate Jiangsu Runchen was aware that it is required to file documents by the applicable deadlines and of the opportunity to request extensions.

The Department establishes deadlines to ensure its ability to complete the proceeding. We note that the CIT and CAFC have long recognized the need to establish, and enforce, time limits for filing questionnaire responses, the purpose of which is to aid the Department in the administration of the dumping laws.[46] It is, therefore, critical that parties adhere to the deadlines established by the Department.[47]

1. <u>New Shipper Review Framework</u>

Section 751(a)(2)(B)(iv) of the Act was recently amended[48] to set forth the criteria the Department will examine to determine if sales, such as the sales by Jiangsu Runchen 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.[49] In evaluating whether the sales in a new shipper review (NSR) are commercially reasonable or typical of normal business practices, and, therefore, *bona fide*, the Department considers, "depending on the circumstances surrounding such sales":

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[42] *See* Denial of Untimely C/D Extension Request; *see also* Comments and Request for Reconsideration at 9-10; *Second* Request for Extension to File Response.
[43] *See* Denial of Untimely C/D Extension Request; *see also* 19 C.F.R. 351.302.
[44] *Id.*
[45] *See* Letter to the Secretary from Jiangsu Runchen re: Waiving of Time Limits of New Shipper Review, dated February 17, 2017; Department Letter re: Rejection of Respondent's Untimely Extension Request, dated March 8, 2017.
[46] *See, e.g., Nippon Steel Corp. v. United States*, 118 F. Supp. 2d 1366, 1377 (CIT 2000) (*Nippon Steel*); *Seattle Marine Fishing Supply, et al. v. United States,* 679 F. Supp. 1119, 1128 (CIT 1998) (it was not unreasonable for the Department to refuse to accept untimely filed responses, where "the record displays the ITA followed statutory procedure" and the respondent "was afforded its chance to respond to the questionnaires, which it failed to do"); *see also, e.g., Dongtai Peak Honey Industry Co., Ltd. v. United States*, 777 F.3d 1343, 1353 (Fed. Cir. 2015) (*Dongtai Peak*).
[47] *See, e.g., Certain Stilbenic Optical Brightening Agents from Taiwan: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 43991 (July 6, 2016), and accompanying Issues and Decision Memorandum at Comments 1 and 2 (finding application of facts available with an adverse inference was warranted where the respondent untimely filed the public version of a questionnaire response).
[48] *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").
[49] Section 751(a)(2)(B)(iv) of the Act.

> (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.[50]

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."[51] In *TTPC*, the Court of International Trade (CIT) also 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,[52] and found that the weight given to each factor investigated will depend on the circumstances surrounding the sale.[53] 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.[54] 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. [55] 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 manner representative of its future commercial practice.[56] Where the Department finds that a sale is not *bona fide*, the Department will exclude the sale from its export price calculations.[57]

2. <u>*Bona Fides* Analysis</u>

In light of Jiangsu Runchen's failure to provide timely responsive documents to our requests for information, the Department is unable to determine whether the sales made by Jiangsu Runchen during the POR were *bona fide* commercial transactions. Specifically, the Department's section C questionnaire requests information about the U.S. market, including a sales list and other data, including, but not limited to, freight expenses, brokerage and handling expenses, insurance expenses, discounts, and rebates, necessary to calculate the price in or to the U.S. market.[58] The Department's section D questionnaire requests information about the factors of production of

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[50] *Id.*
[51] *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)).
[52] *See Tianjin Tiancheng Pharmaceutical Co. v. United States*, 366 F. Supp. 2d 1246, 1250 (CIT 2005) (*TTPC*).
[53] *Id.* at 1263.
[54] *See New Donghua,* 341 F. Supp. 2d at 1344.
[55] *See New Donghua*, 374 F. Supp. 2d at 1339
[56] *Id.*
[57] *See TTPC*, 366 F. Supp. 2d at 1249.
[58] *See* Initial New Shipper AD Questionnaire

merchandise sold in or to the United States.[59] However, as explained above, Jiangsu Runchen failed to file timely responses to the Department's sections C and D questionnaires, and the Department was obligated to reject and remove these responses from the record.[60]

The Trade Facilitation and Trade Enforcement Act of 2015 requires the Department to examine certain factors in determining whether the sales under review are *bona fide*. These include, as summarized above, price, quantity, timing, expenses, whether the subject merchandise involved in such sales was resold in the United States at a profit; whether such sales were made on an arms-length basis; and any other factor determined to be relevant. However, the party that seeks to benefit from our determination (*i.e.*, Jiangsu Runchen) has prevented us from fully examining those statutory factors by failing to timely provide the information requested by the Department to conduct a *bona fide* sales analysis. Without this information on the record, the Department can neither determine nor verify the existence of *bona fide* sales as required by Section 751(a)(2)(B)(iv) of the Act. Thus, 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.[61]

B. Non-Market Economy Country Status

The Department considers the PRC to be an NME country. In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority.[62] None of the parties to this proceeding has contested NME treatment for the PRC. Therefore, for the preliminary results of this review, we treated the PRC as an NME country and applied our current NME methodology in accordance with section 773(c) of the Act.

C. Separate Rates

There is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single AD rate.[63] In the *AR Initiation Notice*, we notified parties of the application process by which exporters and producers may obtain separate rate status in NME proceedings.[64] It is our policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to

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[59] *Id.*
[60] *See* Section C/D Rejection Letter.
[61] *See, e.g.*, *TTPC*, 366 F. Supp. 2d at 1249.
[62] *See, e.g., Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Preliminary Results of the First Administrative Review, Preliminary Rescission, in Part, and Extension of Time Limits for the Final Results*, 76 FR 62765, 62767-68 (October 11, 2011), unchanged in *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review*, 77 FR 21734 (April 11, 2012).
[63] *See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079, 53082 (September 8, 2006); *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances*, 71 FR 29303, 29307 (May 22, 2006).
[64] *See AR Initiation Notice*, 82 FR at 10458.

exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, we analyze each exporting entity in an NME country under the test established in *Sparklers*,[65] as amplified by *Silicon Carbide*.[66] However, if we determine that a company is wholly foreign-owned or located in a market economy (ME), then a separate rate analysis is not necessary to determine whether it is independent from government control.[67]

1. Sunbeauty's Eligibility for a Separate Rate

Per the *AR Initiation Notice*, in order to qualify for a separate rate, an exporter of merchandise subject to an administrative review in an NME country must complete a separate rate application.[68] The instructions therein provide:

> "{T}o be considered for separate-rate treatment, the applicant must have a relevant U.S. sale of subject merchandise to an unaffiliated purchaser, and, for an administrative review, the applicant also *must have a suspended entry of subject merchandise* into the United States during POR. The sale to an unaffiliated purchaser generally must be during the period of investigation or review, or, in a review, a sale related to a suspended POR entry."[69]

However, according to the separate rate application, when the Department selects an exporter to be a mandatory respondent prior to the deadline for submission of separate rate applications, the mandatory respondent is, instead, required to file a full section A questionnaire response, including all separate rate information.[70] Nonetheless, the requirements outlined in the separate rate application remain applicable.

As stated above, the Department issued its Initial Administrative Review AD Questionnaire to Sunbeauty establishing Sunbeauty as a mandatory respondent in this administrative review.[71] In Sunbeauty's March 13, 2017 IQR, Sunbeauty certified that it made export sale(s) of subject merchandise to the United States during the POR.[72] Sunbeauty provided sales and shipping documentation demonstrating that the shipment(s) were, in fact, sales of subject merchandise during the POR.[73] However, in reviewing the Customs and Border Protection (CBP) Entry Summary submitted with its response, the Department found that Sunbeauty had provided no evidence of dutiable entries of subject merchandise during the POR.[74] On March 17, 2017, the

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[65] *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*).
[66] *See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22586-89 (May 2, 1994) (*Silicon Carbide*).
[67] *See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China*, 72 FR 52355, 52356 (September 13, 2007) (*Petroleum Wax Candles*).
[68] *See AR Initiation Notice*, 82 FR at 10458 (noting the Separate Rate Status Application is available on the Department's Web site at *http://enforcement.trade.gov/nme/nme-sep-rate.html*).
[69] *See* Separate Rate Status Application at 2 (emphasis added).
[70] *Id.* at 2 and 4.
[71] *See* Initial Administrative Review AD Questionnaire.
[72] *See* Letter to the Secretary from Sunbeauty re: Sunbeauty Section A Questionnaire Response, dated March 13, 2017 at A-1 (Sunbeauty's March 13, 2017 IQR).
[73] *Id.*
[74] *Id.*

Department provided Sunbeauty with the opportunity to "submit documentary evidence demonstrating that {it} currently {had} a suspended entry of subject merchandise that entered during the POR and on which AD duties were deposited."[75]

Sunbeauty subsequently requested four extensions of time to provide the requested evidence within the Department's established deadline.[76] The Department granted Sunbeauty four extensions of time to submit the documentation, noting that failure to provide the requested documentation could lead the Department to rescind this review with respect to Sunbeauty.[77] Nonetheless, Sunbeauty was unable to provide the requested documentation, and, instead, argued before the Department that, despite its inability to provide evidence of reviewable entries, the Department should conduct its administrative review, regardless.[78] Specifically, Sunbeauty asks the Department to treat its entries as though they were suspended and as though AD duties were deposited on them, despite acknowledging its inability to prove such facts.[79] In their request for an extension of time to comment on surrogate country selection and surrogate values, the petitioners argued that, because a suspended entry of subject merchandise that entered during the POR in this segment does not exist, the appropriate course of action should be to rescind the review.[80]

The Department has examined all of the information provided by Sunbeauty and finds that Sunbeauty's entries were classified upon entry as not subject to the AD order, and, therefore, not subject to suspension of liquidation. Absent a suspended entry, as outlined in the separate rate application, Sunbeauty is not eligible for a separate rate. In addition to the requirement of a suspended entry, we further note that one of the Department's primary functions in the course of an administrative review is to determine the appropriate antidumping duty margin to apply to subject merchandise, for the purpose of directing CBP to liquidate suspended entries of subject merchandise at that rate.[81] Therefore, because the record shows that Sunbeauty's entries of merchandise were made as not being subject to AD duties, and, thus, Sunbeauty has no suspended entries, consistent with section 751(a)(2)(C) of the Act, the Department is treating Sunbeauty as part of the PRC-wide entity.

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[75] *See* Department Letter re: Sunbeauty Entry Documentation, dated March 17, 2017.

[76] *See* Letter to the Secretary from Sunbeauty re: Extension Request for Request for Entry Documentation Supplemental Response, dated March 20, 2017; Letter to the Secretary from Sunbeauty re: 2nd Extension Request for Supplemental Entry Document Questionnaire Response, dated March 24, 2017; Letter to the Secretary from Sunbeauty re: 3rd Extension Request for Supplemental Entry Document Questionnaire Response, dated March 29, 2017; Letter to the Secretary from Sunbeauty re: 4th Extension Request for Supplemental Entry Document Questionnaire Response, dated April 6, 2017.

[77] *See* Memorandum regarding: Sunbeauty Supplemental Entry Document Questionnaire Extension, dated March 20, 2017; Department Letter re: Sunbeauty Entry Doc Supp. 2nd Extension, dated March 24, 2017; Department Letter re: Sunbeauty Entry Doc Supp. 3rd Extension, dated March 29, 2017; Department Letter re: Sunbeauty Entry Doc Supp. 4th Extension, dated March 30, 2017; *see also* Department Letter re: Sunbeauty Entry Doc Supp. Fifth Extension, dated April 7, 2017.

[78] *See* Letter to the Secretary from Sunbeauty re: Sunbeauty's Supplemental Entry Document Questionnaire Response, dated March 31, 2017 (Sunbeauty's March 31, 2017 SQR); Letter to the Secretary from Sunbeauty re: Sunbeauty's Supplemental Entry Document Questionnaire Response, dated April 7, 2017.

[79] Sunbeauty's March 31 2017 SQR at 4.

[80] (citing 19 CFR 351.213(d)).

[81] *See* section 751(a)(2)(C) of the Act (stating that one of the purposes of an administrative review is to assess the current amount of antidumping duties on entries of subject merchandise).

RECOMMENDATION

We recommend applying the above methodology for this preliminary rescission and these preliminary results.

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Agree Disagree

6/29/2017

X Ronald K. Lorentzen

Signed by: RONALD LORENTZEN

Ronald K. Lorentzen
Acting Assistant Secretary
For Enforcement and Compliance