UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

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DATE: January 3, 2018

MEMORANDUM TO: P. Lee Smith
Deputy Assistant Secretary for Policy and Negotiations

FROM: James Maeder
Senior Director
for Antidumping and Countervailing Duty Operations
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

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

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SUMMARY

The Department of Commerce (Commerce) has conducted concurrent new shipper and administrative reviews of the antidumping duty order on honey from the People's Republic of China (China). The American Honey Producers Association and Sioux Honey Association (collectively, the petitioners) submitted comments in the new shipper and administrative reviews. Shanghai Sunbeauty Trading Co, Ltd. (Sunbeauty) submitted comments in the administrative review. The new shipper review (NSR) covers Jiangsu Runchen Agricultural/Sideline Foodstuff Co, Ltd. (Jiangsu Runchen) and the administrative review (AR) covers one mandatory respondent, Sunbeauty. The period of review (POR) for the AR and NSR segments is December 1, 2015, through November 30, 2016. Based on a review of the record and comments received from interested parties regarding our *Preliminary Rescission and Preliminary Results*, we made no changes to the *Preliminary Rescission and Preliminary Results*.[1] Therefore, because we continue to find that we cannot determine whether Jiangsu Runchen made *bona fide* sales(s) to the United States pursuant to section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act),[2] Commerce is rescinding the new shipper review of Jiangsu Runchen for the POR.[3] We also continue to find that Sunbeauty does not qualify for a separate rate and should be treated as

[1] *See Honey from the People's Republic of China: Preliminary Rescission of the New Shipper Review and Preliminary Results of the Administrative Review; 2015-2016,* 82 FR 31557 (July 7, 2017) (*Preliminary Rescission and Preliminary Results*), and accompanying Preliminary Decision Memorandum.
[2] *Id.*
[3] *Id.*

part of the China-wide entity. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

Comment 1: Correction of Draft Liquidation Instructions for U.S. Customs and Border Protection (CBP) in the NSR
Comment 2: Commerce's Representation of Sunbeauty's Request Regarding the Treatment of its Entries
Comment 3: Commerce's Practice of Partially Granting Sunbeauty's Extension Requests
Comment 4: Treatment of Sunbeauty as Part of the China-wide Entity

BACKGROUND

On July 7, 2017, Commerce published the *Preliminary Rescission and Preliminary Results* and invited interested parties to comment.[4] On August 14, 2017, the petitioners submitted a case brief for the NSR.[5] On August 16, 2017, Sunbeauty submitted a case brief for the AR.[6] On August 23, 2017, the petitioners submitted a rebuttal brief for the AR.[7]

On July 31, 2017, Sunbeauty improperly filed new factual information under 19 CFR 351.301(c)(5) for consideration in the AR related to its participation in a 2014-2015 NSR before Commerce.[8] Commerce rejected the submission because Sunbeauty failed to provide either a detailed narrative of the information in its submission or to explain why it should be considered.[9] On August 7, 2017, Commerce received a properly filed submission of factual information from Sunbeauty for consideration in the AR related to its participation in a 2014-2015 NSR before Commerce.[10] In accordance with 19 CFR 351.301(c)(5), Commerce granted interested parties an opportunity to comment on Sunbeauty's submission of factual information.[11] No interested parties commented on the factual information submitted by Sunbeauty.

On October 30, 2017, Commerce determined it was not practicable to complete the aligned final results of this new shipper review and administrative review within 120 days after the date of

[4] *Id*.
[5] *See* the Petitioners' Case Brief, "Petitioners Comments on the Preliminary Results of the New Shipper Review," dated August 14, 2017 (Petitioners Case Brief).
[6] *See* Shanghai Sunbeauty Trading Co., Ltd. Case Brief, "Honey from the People's Republic of China: Sunbeauty's Case Brief," dated August 16, 2017 (Sunbeauty Case Brief).
[7] *See* the Petitioners' Rebuttal Brief, "Honey from People's Republic of China, Petitioners' Rebuttal Brief," dated August 23, 2017 (Petitioners Rebuttal Brief).
[8] *See* Sunbeauty's Letter, "Honey from the People's Republic of China: Sunbeauty's Submission of Factual Information," dated July 31, 2017.
[9] *See* Commerce Letter re: Submission of Factual Information by Respondent Rejection, dated August 3, 2017 (Sunbeauty Rejection Letter); *see also* Memorandum, "Submission of Factual Information by Respondent Rejection," dated August 3, 2017.
[10] *See* Sunbeauty's Letter, "Honey from the People's Republic of China: Sunbeauty's Submission of Factual Information," dated August 7, 2017 (Sunbeauty New Factual Information).
[11] *See* Memorandum, "Submission of Factual Information by Respondent Comment Period and Case Brief Extension," dated August 7, 2017.

publication of the *Preliminary Rescission and Preliminary Results*. As such, Commerce extended the time limit for these final results by 60 days.[12]

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, Commerce's written description of the merchandise under the order is dispositive.

DISCUSSION OF THE ISSUES

<u>General Issues</u>

Comment 1: Correction of Draft Liquidation Instructions for CBP in the NSR

The Petitioners' Arguments

- Commerce made a typographical error at paragraph three of the draft liquidation instructions regarding the POR for the injunction with court number 17-00089 discussed in message number 7131302, dated 05/11/2017.[13]
- Commerce should correct this error for the final liquidation instructions sent to CBP.[14]

No other parties commented on this issue.

Commerce Position:
Commerce agrees with the petitioners that it inadvertently made a typographical error and that this error should be corrected for the final liquidation instructions sent to CBP. Therefore, Commerce will make this correction to reflect the correct POR for the injunction with court number 17-00089 discussed in message number 7131302, dated 05/11/2017.

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[12] *See* Memorandum, "Extension of Deadline for Final Results of the 2015-2016 Antidumping Duty New Shipper Review and Final Results of the 2015-2016 Antidumping Duty Administrative Review," dated October 30, 2017.
[13] *See* the Petitioners' Case Brief at 2.
[14] *Id.*

Comment 2: Commerce's Representation of Sunbeauty's Request Regarding the Treatment of its Entries

Sunbeauty's Arguments:

- Commerce misrepresented how Sunbeauty requested Commerce treat its entries by claiming Sunbeauty asked that its entries be treated "'as though they were suspended and as though {antidumping duties} were deposited on them'" when Sunbeauty requested that Commerce treat its entries as a different type of entry.[15]

No other parties commented on this issue.

Commerce Position:
Sunbeauty requested that Commerce treat its entries as a certain type of entry.[16] However, Sunbeauty's requested treatment is in discord with the type of entries reported by the importer of Sunbeauty's merchandise, as reflected on the CBP form 7501.[17] Thus, there are differences between the entry type claimed on the 7501 and the entry type being requested by Sunbeauty. By asking that Commerce treat its entries as a different entry type, notwithstanding how the entries were represented to CBP, Sunbeauty was essentially asking Commerce to treat its entries as though they were suspended and as though cash deposits were made on them because those traits are synonymous with certain entry types. Commerce, therefore, has not misrepresented Sunbeauty's request. Commerce's treatment of the entries at issue in this administrative review is consistent with the information on the record of this review. Given the discrepancy between Sunbeauty's request, and information reported to CBP, we plan to refer this matter to CBP.

Comment 3: Commerce's Practice of Partially Granting Sunbeauty's Extension Requests

Sunbeauty's Arguments

- In granting Sunbeauty's extension requests, Commerce misled Sunbeauty by noting that failure to provide evidence of a suspended entry could lead Commerce to rescind its review, but in the *Preliminary Rescission and Preliminary Results*, Commerce found Sunbeauty was not eligible for a separate rate for failing to provide such evidence.[18]
- Commerce's practice of partially granting Sunbeauty's extension requests was arbitrary and unreasonable as Commerce did not take into consideration the time necessary for Sunbeauty to gather requested documentation, correct clerical errors, involve unaffiliated parties, or translate documents.[19]
- Commerce unreasonably relied on the number of extensions already granted to Sunbeauty to provide evidence of a suspended entry rather than its past practice of

[15] *See* Sunbeauty Case Brief at 2-3 (citing *Preliminary Rescission and Preliminary Results*).
[16] *See* Sunbeauty's Letter, "Sunbeauty's Supplemental Entry Document Questionnaire Response," dated March 31, 2017 at 2-4.
[17] *See* Sunbeauty's March 13, 2017 Section A Questionnaire Response at Exhibit A-7.
[18] *Id.* at 3.
[19] *Id.* at 3-4.

relying on the reason for the request and the statutory deadlines in denying Sunbeauty's final extension request.[20]

- Sunbeauty argues that Commerce mistakenly stated in its extension memoranda that Sunbeauty made five extension requests when it only made four; thus, Commerce's denial of Sunbeauty's extension request was unreasonable and not in accordance with the record.[21]
- Sunbeauty's inability to provide documents requested by Commerce was out of Sunbeauty's control and reinforced by Commerce's unreasonable time constraints, further illustrated by the fact that it issued its *Preliminary Rescission and Preliminary Results* early.[22]

The Petitioners' Arguments

- As the requirement to have a reviewable, suspended entry is set out in the Separate Rate Application referenced in the *Initiation Notice*, Sunbeauty should have been prepared to provide Commerce with all the information necessary to establish it was eligible for a separate rate with its section A response.[23]
- Sunbeauty's claims that it needed at least six weeks of additional time to provide evidence of a suspended entry are unfounded because Sunbeauty requested this review and should have been prepared to provide such evidence to Commerce, was put on notice of this requirement in the *Initiation Notice* on February 13, 2017, and in Commerce's questionnaire issued on the same date.[24]
- In addition to the time it was granted to respond to Commerce's questionnaire, Commerce granted Sunbeauty 20.5 additional days to provide evidence of a suspended entry, a period amounting to three times that requested in its initial extension request.[25]
- Sunbeauty admitted in its case brief that it could not provide evidence that it had a reviewable entry at the time it requested the review as its importer had not attempted to change the status of the entry.[26]
- While Sunbeauty states that the time allowed to procure evidence of a suspended entry was inadequate as the information was in control of other parties, Sunbeauty did not demonstrate that it made a reasonable effort to obtain the required information in a timely manner.[27]
- Commerce has no obligation to grant additional extensions of time to parties when there is additional time before the statutory time limit to issue its preliminary results in a matter, therefore, Commerce's decision to deny further extension requests was consistent with the regulations, and relevant court precedent, and within its recognized discretion to enforce time limits.[28]

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[20] *Id.* at 4-5.
[21] *Id.* at 5-6.
[22] *Id.* at 6-7.
[23] *See* Petitioners Rebuttal Brief at 3 (citing *Initiation of Antidumping and Countervailing Administrative Reviews*, 82 FR 10457 (February 13, 2017) (*Initiation Notice*)).
[24] *Id.* at 3-4.
[25] *Id.*
[26] *Id.* at 4.
[27] *Id.* at 4-5.
[28] *Id.* at 5.

Commerce Position:
As an initial matter, Commerce disagrees with Sunbeauty's assertion that by noting it "*may* rescind" the review with respect to Sunbeauty in its memoranda granting Sunbeauty's extension(s), that it established a practice by which it was bound, but did not follow, for the *Preliminary Rescission and Preliminary Results*.[29] Commerce merely notified Sunbeauty of the possibility of rescinding the review, similar to Commerce's practice of notifying parties of the possible application of facts available and adverse facts available if a party fails to respond to Commerce's request for information.[30] [31]

Commerce disagrees with Sunbeauty's claim that its partial granting and eventual denial of Sunbeauty's extension request(s) was arbitrary and unreasonable.[32] According to Commerce's regulations, the Secretary may, for good cause, extend a time limit regarding the receipt of factual information before Commerce unless expressly precluded by statute.[33] Thus, Commerce is not required to grant a timely extension request for additional time to submit factual information. Rather, Commerce has discretion in deciding whether to grant timely requests for extensions of deadlines relating to the submission of factual information.[34] The Court of International Trade and the Court of Appeals for the Federal Circuit (CAFC) have long recognized the need to establish, and enforce, time limits for filing factual information, the purpose of which is to aid Commerce in the administration of the dumping laws.[35]

Commerce is also bound by statutory deadlines to complete its reviews, and thus, cannot grant unlimited extensions for parties to submit factual information. While Sunbeauty argues that Commerce did not fully utilize the time available to it to complete its review, it is within Commerce's discretion to complete its reviews without extending its statutory deadlines to the fullest extent.[36] The statutory deadlines for issuing a preliminary determination exist so that

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[29] *See e.g.,* Commerce Letter re: Sunbeauty Entry Doc. Supp. Fifth Extension, dated April 7, 2017 (emphasis added).

[30] *See, e.g.,* section 776(a)-(b) of the Act.

[31] While the factual and legal basis for treating Sunbeauty as part of the China-wide entity because it failed to provide evidence it was eligible for a separate rate differs from rescinding the review with respect to Sunbeauty, the practical effect is the same because Sunbeauty was already a part of the China-wide entity when it requested this review.

[32] *See* Sunbeauty's Case Brief at 3-4.

[33] *See* 19 CFR 351.302(b).

[34] *Id.*

[35] *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 {Department} followed statutory procedure" and the respondent "was afforded its chance to respond to the questionnaires, which it failed to do"); *see also Reiner Brach GmbH Co. KG v. United States*, 206 F. Supp. 2d 1323, 1334 (CIT 2002) (finding Commerce's policy of setting time limits to be reasonable because the agency "clearly cannot complete its work unless it is able at some point to 'freeze' the record and make calculations and findings based on that fixed and certain body of information."); *see also, e.g., Dongtai Peak Honey Industry Co., Ltd. v. United States*, 777 F.3d 1343, 1353 (Fed. Cir. 2015) (*Dongtai Peak*) (upholding Commerce's application of AFA to a respondent company who failed to submit a questionnaire response or a timely extension request by the established deadlines).

[36] *See* Section 751(a)(3)(A) of the Act.

Commerce may "complete the review within the foregoing time."[37] Here, Commerce noted that the record contradicted Sunbeauty's request for a separate rate, and provided Sunbeauty multiple opportunities over the course of three weeks[38] to clarify the record on this issue. The Act requires that Commerce provide an opportunity for a party to remedy a deficient record.[39] Consistent with the statute, as previously noted, Commerce provided Sunbeauty with multiple opportunities to clarify the information on the record. Commerce's finding that Sunbeauty was not entitled to a separate rate was based on record evidence, and not an application of facts available or based any adverse inferences.[40] Sunbeauty's assertion that it should have received additional extensions until the statutory deadline, so that it could potentially provide information clarifying its prior questionnaire response, which in turn may have led to a different result, is without justification. As stated above, Commerce has the discretion to establish and enforce its deadlines regarding the submission of factual information.[41] Setting such time limits is reasonable because the agency "clearly cannot complete its work unless it is able at some point to 'freeze' the record and make calculations and findings based on that fixed and certain body of information."[42] Further, the CAFC has recognized "an agency's power to implement and enforce proper procedures for constructing an agency record."[43]

Commerce granted, in part, four extensions for Sunbeauty in response to Sunbeauty's first three extension requests to produce the proper documentary evidence that demonstrates it currently had a suspended entry of subject merchandise that entered during the POR on which estimated AD duties were deposited.[44] Commerce denied Sunbeauty's fourth request for a fifth extension of time.[45] Thus, we provided Sunbeauty a substantial opportunity within the statutory time limits to produce the documentation by granting a number of extensions. Sunbeauty's failure to provide the requested information in a timely manner allowed Commerce to complete its review and, based on the information on the record, treat Sunbeauty as part of the China-wide entity, *see* Comment 4. There is no legal basis requiring Commerce to grant parties additional time or opportunities to supplement the record relative to the proximity of the preliminary results, and

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[37] *Id.*
[38] Notably, this does not include the time allotted to Sunbeauty to respond to the original questionnaire.
[39] *See* Section 782(d) of the Act.
[40] *See Preliminary Rescission and Preliminary Results*, and accompanying Preliminary Decision Memorandum at 10-11.
[41] *See, e.g., Nippon Steel*, 118 F. Supp. 2d at 1377.
[42] *See Reinber Brach GmbH Co. KG v. United States*, 206 F. Supp. 2d 1323, 1334 (CIT 2002) (quotation marks and citation omitted).
[43] *See PSC VSMPO-Avisma Corp. v. United States,* 688 F.3d 751, 761 (Fed. Cir. 2012).
[44] The Preliminary Results of Review properly identified the number of extensions granted in this matter. The record reflects that Sunbeauty initially made three extension requests which Commerce granted, in part. Commerce then granted Sunbeauty a fourth extension of time, *sua sponte*, in order to aid its analysis of this issue and provide Sunbeauty an additional opportunity to provide the requested information. Before the expiration of Commerce's fourth extension, Sunbeauty made a fourth extension request for a fifth extension of time which Commerce denied. *See* Memorandum, "Sunbeauty Supplemental Entry Document Questionnaire Extension," dated March 20, 2017; Commerce Letter re: Sunbeauty Entry Doc Supp. 2nd Extension, dated March 24, 2017; Commerce Letter re: Sunbeauty Entry Doc Supp. 3rd Extension, dated March 29, 2017; Commerce Letter re: Sunbeauty Entry Doc Supp. 4th Extension, dated March 30, 2017; Commerce Letter re: Sunbeauty Entry Doc Supp. Fifth Extension, dated April 7, 2017.
[45] *See* Commerce Letter, re: Sunbeauty Entry Doc. Supp. Fifth Extension, dated April 7, 2017.

notably, Sunbeauty does not cite to any in its argument.[46] Further, while Commerce's decision to deny Sunbeauty's final extension request considered the number of extensions and the amount of time previously granted, as the company evidenced an inability to provide the information in a timely manner, doing so was reasonable and not arbitrary because as mentioned above, Commerce is permitted to establish and enforce deadlines for filing information and is required to meet statutorily prescribed deadlines. Additionally, Sunbeauty's extension requests were unaccompanied by evidence that it would have been able to provide the requested information in a timely manner, if at all, because as Sunbeauty stated in its requests and case brief, it had no evidence of a reviewable entry at the time and would have to attempt to change the status of its entry through other parties.[47] While Sunbeauty would have preferred that Commerce grant further extensions, Commerce must balance the deadlines it establishes for filing information with its deadlines for issuing preliminary results of review. Had Sunbeauty provided the information at issue, Commerce would have needed time to conduct a full antidumping analysis. Therefore, Commerce agrees with the petitioners that denying additional extension requests was reasonable and not arbitrary.

Finally, Commerce disagrees that time constraints prevented Sunbeauty from providing proper documentary evidence supporting its claim on its entries. The record does not indicate that a lack of time prevented Sunbeauty from obtaining the necessary documents. In fact, Sunbeauty initially requested a shorter period of time, rather than the longer period of time it argues for in its case brief, to provide supporting documentation to Commerce.[48] Sunbeauty further claimed that obtaining proper documentation was out of its control and Commerce did not take into consideration the time necessary for Sunbeauty to gather requested documentation, correct clerical errors, involve unaffiliated parties, or translate documents, and thus, Commerce placed an unreasonable burden on Sunbeauty to obtain the proper documentation particularly because the entry type error was caused by its importer. However, the Federal Circuit has held that it remains incumbent upon respondents to complete administrative records.[49] Further, while Sunbeauty claims Commerce should not consider its importer's entry type error in the review against Sunbeauty, Commercemay consider an importer's actions in an administrative or new shipper review.[50] Thus, to the extent Sunbeauty claims the record is deficient as a result of Commerce's unreasonable actions, we disagree.

Comment 4: Treatment of Sunbeauty as Part of the China-wide Entity

Sunbeauty's Arguments

- Commerce cited a paragraph from the separate rate application to state that an applicant must have a suspended entry of subject merchandise during the POR and claimed that

[46] *See* Sunbeauty Case Brief at 5.
[47] *Id.*
[48] *See* Memorandum, "Sunbeauty Supplemental Entry Document Questionnaire Extension," dated March 20, 2017.
[49] *See QVD Food Co. v. United States*, 658 F.3d 1318, 1324 (Fed. Cir. 2011) (explaining that "the burden of creating an adequate record lies with {interested parties} and not with Commerce.").
[50] *See Honey from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 27633 (May 14, 2005); *see also Honey from the People's Republic of China: Final Rescission of the New Shipper Review of Shanghai Sunbeauty Trading Co., Ltd.*, 82 FR 15697 (March 30, 2017) (finding Sunbeauty's importer's actions led, in part, to a determination that Sunbeauty's sales were non-*bona fide*).

this was applicable in this review. However, Sunbeauty was instructed by Commerce to file a response to the Section A questionnaire, which does not contain the same language as the separate rate application.[51]
- Commerce misrepresented Section 751(a)(2)(C) of the Act as it does not define reviewable entries to be "suspended entries" or use the wording "suspended entries," and thus, Commerce is unreasonably treating Sunbeauty as part of the China-wide entity based on those premises.[52]
- Commerce's determination that Sunbeauty has no reviewable entries of subject merchandise is contrary to the law and against case records.[53]

The Petitioners' Arguments
- Commerce has correctly treated Sunbeauty as part of the China-wide entity and correctly applied the China-wide rate of $2.63 per kilogram.[54]
- Sunbeauty was subject to the China-wide rate throughout its new shipper review and Sunbeauty has identified nothing during the course of this review to demonstrate that it should not be a part of the China-wide Entity.[55]
- Sunbeauty's claims that it was not aware that an entry had to be suspended from automatic liquidation to be subject to administrative review are unfounded as Sunbeauty has participated in other proceedings and is represented by trade counsel.[56]
- Commerce provided Sunbeauty with multiple extensions, but Sunbeauty failed to provide the information required of it.[57]
- Sunbeauty's claim that it must only prove that it is absent of government control is incorrect because if a respondent is unable to prove that it has a suspended entry then whether or not it is absent of government control is moot.[58]
- Sunbeauty argues that Section 751(a)(2)(C) does not state that only "suspended" entries are subject to administrative review. However, entries that have already been liquidated are no longer entries that can be reviewed because they are now subject to post-entry liquidation procedures.[59]
- Sunbeauty's claim that Commerce would be able to use the dumping rate calculated on the already liquidated entry as Sunbeauty's going forward cash deposit rate is incorrect. The law requires that cash deposit rates must reflect the duty rates calculated on entries during the administrative review process to determine final assessment rates for those entries.[60]

Commerce Position:
Commerce agrees with the petitioners that Sunbeauty was subject to the China-wide rate at the outset of the administrative review, and should remain subject to the China-wide rate. Because

[51] *See* Sunbeauty's Case Brief at 8.
[52] *Id.* at 9.
[53] *Id.* at 9 and 10.
[54] *See* the Petitioners' Rebuttal Brief at 5.
[55] *Id.* at 5-6.
[56] *Id.* at 6.
[57] *Id.* at 7.
[58] *Id.*
[59] *Id.*
[60] *Id.* at 8.

Sunbeauty was unable to provide evidence that it had a suspended entry during the POR, as provided for in the separate rate application, it has been unable to demonstrate its entitlement to a separate rate. Sunbeauty argues that Commerce requested that it respond to the Antidumping Duty Questionnaire as a mandatory respondent, and thus, it need not meet the requirements of the Separate Rate Application. However, as outlined in the *Initiation Notice*, Commerce's practice in proceedings involving non-market economy countries is to assign parties a country-wide rate unless they demonstrate eligibility for a separate rate, whether or not they are a mandatory respondent. As such, requesting that Sunbeauty respond to the Antidumping Duty Questionnaire as a mandatory respondent does not absolve it from satisfying the general guidelines for separate rate eligibility outlined in the separate rate application. The *Initiation Notice* states that "all firms listed below" (which included Sunbeauty) "must complete, as appropriate, either a separate rate application or certification."[61] Further, it is the Separate Rate Application instructions, not the Antidumping Duty Questionnaire, that informs mandatory respondents to respond to the substantive portion of the Antidumping Duty Questionnaire instead of the Separate Rate Application, a process which Sunbeauty followed. Sunbeauty provides no argument as to why it believed the instructions for the Separate Rate Application regarding the requirement to answer the Antidumping Duty Questionnaire apply to it, but the requirement in the Separate Rate Application to have a suspended entry does not apply to it.

Commerce's practice is to only conduct administrative reviews on suspended entries of subject merchandise.[62] Suspended entries are required for administrative reviews because of the direct relationship between suspension of liquidation and Commerce's ability to enforce its antidumping duty orders. For a company subject to administrative review, a suspended entry is necessary for Commerce to assess the duties determined in that administrative review. When there is no evidence of a suspended entry, Commerce finds that parties are not eligible for a separate rate because there is no evidence that there is an entry upon which to assess duties.

Commerce has found that where evidence of a suspended entry is not provided for a company who does not currently have a separate rate in a non-market economy proceeding, that company should remain part of the China-wide Entity.[63] Sunbeauty did not provide the evidentiary documentation of a suspended entry of subject merchandise, and therefore it is within Commerce's discretion to find Sunbeauty is not eligible for a separate rate. Thus, while Sunbeauty claims that the Act does not require a "suspended entry," as explained above, the requirement for a suspended entry of subject merchandise and our decision not to calculate a separate rate for Sunbeauty is consistent with Commerce practice and is within our discretion. As such, we disagree with Sunbeauty's argument that Commerce's determination that Sunbeauty

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[61] *See Initiation Notice*, 82 FR at 10458.

[62] *See, e.g., Certain Tissue Paper Products from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 18497 at 18500 (April 4, 2008), unchanged in *Certain Tissue Paper Products from the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review*, 73 FR 58113 (October 6, 2008).

[63] *See Honey from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 38941 (June 28, 2013) (*Honey China 2013 Prelim*), unchanged in *Honey from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012,* 78 FR 56860 (September 16, 2013).

has no reviewable entries of subject merchandise is contrary to the law and information on the case record.

One of Commerce's primary functions in the course of an administrative review is to determine the appropriate antidumping duty margin to apply to entries of subject merchandise, for the purpose of directing CBP to liquidate suspended entries of subject merchandise at that rate.[64] Entries that have been liquidated cannot be reviewed because they are subject to post-entry liquidation, which is why Commerce requested that Sunbeauty submit evidence of suspended entries. Since it could not demonstrate that it had any suspended entries, Commerce's determination that Sunbeauty did not have any reviewable entries is supported by the record.

Commerce 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. Therefore, because the record demonstrates that Sunbeauty's entries of subject merchandise were reported to CBP as not being subject to AD duties, and thus, Sunbeauty has no suspended entries, consistent with our practice, Commerce is treating Sunbeauty as part of the China-wide entity.[65]

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If accepted, we will publish the final results of this New Shipper Review and Administrative Review.

☒	☐
Agree	Disagree

1/3/2018

X

Signed by: PRENTISS SMITH

P. Lee Smith
Deputy Assistant Secretary
for Policy and Negotiations

[64] *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).
[65] *See, e.g., Honey China 2013 Prelim.*