

**DEPARTMENT OF COMMERCE****International Trade Administration**

[A-570-863]

**Notice of Preliminary Determination of Sales at Less Than Fair Value: Honey From the People's Republic of China**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Preliminary Determination of Sales at Less Than Fair Value; Honey from the People's Republic of China

**EFFECTIVE DATE:** May 11, 2001.

**FOR FURTHER INFORMATION CONTACT:**

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**The Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations refer to the regulations codified at 19 CFR part 351 (April 2000).

**Preliminary Determination**

We preliminarily determine that honey from the People's Republic of China (the PRC) is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margin of sales at LTFV is shown in the "Suspension of Liquidation" section of this notice.

**Case History**

On October 26, 2000, the Department initiated antidumping investigations of honey from Argentina and the PRC. See Initiation of Antidumping Duty Investigations: Honey From Argentina and the People's Republic of China, 65 FR 65831-65834 (November 2, 2000) (Initiation Notice). The petitioners in these investigations are the American Honey Producers Association and the Sioux Honey Association. Since the

initiation of these investigations, the following events have occurred with respect to honey from the PRC.

On November 13, 2000, the United States International Trade Commission (ITC) notified the Department of its affirmative preliminary injury determination on imports of subject merchandise from Argentina and the PRC. On November 17, 2000, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of the subject merchandise from Argentina and the PRC (65 FR 69573).

On November 27, 2000, the Department issued Section A of its antidumping duty questionnaire to the Embassy of the PRC with a letter requesting that it forward the questionnaire to all exporters of honey who shipped subject merchandise to the United States during the period of investigation (POI) and instruct those exporters to respond to Question 1, Section A. On December 12, 2000, the Department received responses from Inner Mongolia Autonomous Region Native Produce and Animal By-Products Import and Export Corporation (Inner Mongolia), Kunshan Foreign Trading Company (Kunshan), Zhejiang Native Produce and Animal By-Products Import and Export Corporation (Zhejiang), High Hope International Group Jiangsu Foodstuffs Import and Export Corporation (High Hope), Shanghai Eswell Enterprise Company Ltd. (Shanghai Eswell), Anhui Native Produce Import and Export Corporation (Anhui), and Henan Native Produce Import and Export Corporation (Henan). Based on this information, the Department selected Inner Mongolia, Kunshan, and Zhejiang as mandatory respondents in this investigation because they represent, by volume, the three largest exporters of subject merchandise during the POI. See Memorandum to Joseph A. Spetrini, Selection of Respondents, dated December 19, 2000.

On December 19, 2000, the Department issued all sections of the antidumping duty questionnaire to Inner Mongolia, Kunshan, and Zhejiang. On January 19, 2001, we received responses to Section A of the Department's questionnaire from these three exporters as well as Section A responses from High Hope, Shanghai Eswell, Anhui, and Henan. On February 2, 2001, the Department issued supplemental Section A questionnaires to Inner Mongolia, Kunshan, Zhejiang, High Hope, Shanghai Eswell, Anhui, and Henan. On February 23, 2001, we

received responses from all seven exporters.

On February 9, 2001, Inner Mongolia, Kunshan, and Zhejiang responded to Sections C and D of the Department's questionnaire. Petitioners submitted comments on these responses on February 20, 2001. On February 13, 2001, we solicited comments from interested parties on surrogate country selection for purposes of this investigation. We received comments from petitioners and respondents Inner Mongolia, Kunshan, and Zhejiang on March 15, 2001. On February 23, 2001, the Department issued a supplemental questionnaire with respect to Sections C and D to the mandatory respondents. The Department issued a second supplemental questionnaire for Section A to the mandatory respondents on March 1, 2001. On March 16, 2001, Inner Mongolia, Kunshan, and Zhejiang responded to the supplemental questionnaire concerning Sections C and D and responded to the second supplemental questionnaire for Section A. Petitioners submitted comments on respondents' supplemental questionnaire responses (from March 16, 2001) on April 20, 2001 and April 23, 2001. On April 25, 2001, the mandatory respondents commented on petitioners' April 20, 2001 filing.

On March 19, 2001, we invited interested parties to provide publicly available information for valuing the factors of production. On April 4, 2001, we received comments and information from interested parties regarding valuation of the factors of production. Petitioners and respondents filed rebuttal comments on April 11, 2001. On April 12, 2001, petitioners commented on respondents' April 11, 2001 filing. Respondents submitted additional comments and information on April 18, 2001. Petitioners also filed additional comments regarding the valuation of the factors of production on April 20, 2001 and April 23, 2001. On April 24, 2001, the Department requested that petitioners and respondents provide additional information and comments concerning the calculation of a surrogate value for factory overhead. See Memorandum to the File from Donna L. Kinsella (April 24, 2001). On April 27, 2001, we received responses from petitioners and respondents.

On March 29, 2001, the Department requested additional information on the export licensing system for honey in the PRC. On April 12, 2001 and April 18, 2001, all respondents provided this information.

On February 14, 2001, petitioners made a timely request for a fifty-day

postponement of the preliminary determination pursuant to section 733(c)(1)(A) of the Act. On February 22, 2001, we postponed the preliminary determination until no later than May 4, 2001. See *Honey from Argentina and the People's Republic of China: Notice of Postponement of Preliminary Antidumping Duty Determinations*, 66 FR 12924 (March 1, 2001).

On February 23, 2001, the petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of honey from the PRC. On March 19, 2001, the Department requested monthly shipment data for the period February 1999 through February 2001 from Inner Mongolia, Kunshan, Zhejiang, High Hope, Shanghai Eswell, Anhui, and Henan. On April 2, 2001, Inner Mongolia, Kunshan, Zhejiang, High Hope, Shanghai Eswell, Anhui, and Henan responded to this request.

#### Period of Investigation

In accordance with section 351.204(b)(1) of the Department's regulations, the POI comprises the two most recently completed fiscal quarters as of the month in which the petition was filed. For all exporters, this is the period of January 1, 2000 through June 30, 2000.

#### Scope of Investigation

For purposes of this investigation, the products covered 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 investigation is currently classifiable under subheadings 0409.00.00, 1702.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (U.S. Customs) purposes, the Department's written description of the merchandise under investigation is dispositive.

#### Non-Market Economy Status for the People's Republic of China

The Department has treated the PRC as a non-market economy (NME) country in all past antidumping investigations. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's*

*Republic of China*, 65 FR 33805 (May 25, 2000), and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China*, 65 FR 19873 (April 13, 2000). A designation as an NME remains in effect until it is revoked by the Department. See Section 771(18)(C) of the Act. The respondents in this investigation have not requested a revocation of the PRC's NME status. We have, therefore, preliminarily determined to continue to treat the PRC as an NME. When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs us to base the normal value (NV) on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. The sources used to value individual factors are discussed under the "Normal Value" section, below.

#### Separate Rates

It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country a single rate, unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Inner Mongolia, Kunshan, Zhejiang, High Hope, Shanghai Eswell, Anhui, and Henan have provided company-specific separate rate information and have stated that there is no element of government ownership or control. In their questionnaire responses, Inner Mongolia, Kunshan, Zhejiang, High Hope, Shanghai Eswell, Anhui, and Henan state that they are independent companies "owned by all the people" and controlled by the general assembly of workers and employees. Inner Mongolia, Kunshan, Zhejiang, High Hope, Shanghai Eswell, Anhui, and Henan further claim that they do not maintain any corporate relationship with the central, provincial, and local government in terms of production, management, and operations.

Inner Mongolia, Kunshan, Zhejiang, High Hope, Shanghai Eswell, Anhui, and Henan have stated that their exports of subject merchandise to the United States were subject to the export licensing system governing all exports of honey from the PRC. They submitted for the record the following relevant State Council laws and regulations governing the export licensing system: "Notice on Issuing Guidelines of Quota Bidding for Exporting Commodities," "Detailed Rules on Bidding for Exporting Commodity Quotas," and "Notice of Issuing List of Commodities Subject to Export License

Administration, 2001." While exports of honey from the PRC have been subject to licensing requirements for many years, during the POI of this proceeding, the export licensing system in effect was largely dictated by the terms of the Agreement Suspending the Antidumping Investigation of Honey from the PRC (the "Agreement"). See 60 FR 42521 (August 16, 1995). In October 1995, for example, the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) issued the Provisional Regulations for the Administration of Export of Honey to the United States (Provisional Regulations), which implemented the Agreement and established the process for PRC exporters to obtain the quotas necessary to export honey to the United States.

Under the terms of the Agreement, exports of PRC honey to the United States were subject to an annual limitation and a reference price at or above which all exports of honey to the United States were required to be sold. The annual limit for exports to the United States was allocated by MOFTEC to specific exporters through an open bidding process, in which the largest exporters bid first based on their historical export levels. Bid applications were processed by the China Chamber of Commerce of Importers and Exporters of Foodstuffs, Native Produce and Animal By-Products (the "Chamber"). After the largest 10 exporters bid and were allocated export volume, an open bidding process was initiated for the remaining 18 eligible exporters.<sup>1</sup> The total fee for the bid that the winner paid to MOFTEC for the export volume was based on the bidding prices and the quantity of the quota that the recipient won. Individual companies that had successfully bid for export limit were then notified of their respective quota allocation by the Foreign Trade Administration Department (FTA).<sup>2</sup>

Upon completion of the bidding process, the Chamber issued letters to each company successfully bidding for export volume, confirming that the company was eligible for an export license. This confirmation of eligibility for an export license, coupled with the

<sup>1</sup> Only those exporters that participated in the original 1994-95 PRC honey antidumping investigation were eligible to bid, on the grounds that only those companies had demonstrated their willingness to reliably participate in the investigation.

<sup>2</sup> If an export subsequently realized it could not fully utilize its export volume, it could ask the Chamber to allow it to transfer the unused portion to another exporter. Likewise, if an exporter realized it could export more than its export volume, it could apply to the Chamber for unused export volume transferred by other exporters.

notification of volume allocation from the FTA, allowed the exporter to enter into a contract for the sale of honey to the United States. The exporter then submitted to the Chamber the formal notification of volume allocation and a copy of its contract for sale of honey to the United States. The Chamber then reviewed the contract to ensure that the sale price was above the applicable reference price set by the Department.

The exporter then submitted to the Quota Licensing Board (QLB) or the Special Commissioners Office an application for an export license, including a copy of the formal notice of volume allocation from the FTA, the relevant contract for the sale of honey to the United States, and the letter of eligibility for an export license issued by the Chamber. Export licenses were issued on a shipment-specific basis, identified the price, quantity, and destination of the honey to be exported, and were valid for a period of three months from the date of issuance. After receiving an export license, the exporter would apply for a export volume certificate confirming that the exporter was authorized to export the quantity of honey covered by the sales contract. The QLB kept a running tally of the amount of export volume available to any individual exporter, and ensured that the amount of honey covered in a contract was less than or equal to that exporter's remaining export volume. The final step prior to exportation involved the submission of all relevant documents, including the export volume certificate and export license, to the PRC Customs Service, which checked the documentation before authorizing export.

The Agreement was terminated in July 2000. See Notice of Final Results of Five-Year ("Sunset") Review, Termination of Suspended Antidumping Investigation on Honey From the People's Republic of China, 65 FR 46426 (July 28, 2000). Thereafter, MOFTEC made slight modifications to the export licensing system for honey. For example, under a new regulation issued by MOFTEC in December 2000, "The Notice of Issuing List of Commodities Subject to Export License Administration, 2001 and Relevant Issues," export volume certificates are no longer required for exports of PRC honey to the United States. In the absence of a reference price issued by the Department and in an attempt to ensure that there is no dumping of Chinese honey, the Chamber, in consultation with the affected exporters, periodically establishes a minimum export price (EP) based on recent EPs. All exports of honey to the United

States are required to be sold at or above this minimum EP.

The bidding process for export volume, however, remains the same as that in operation under the Agreement, and the annual limitation on exports of Chinese honey to the United States in effect at the time the Agreement was terminated remains in effect through July 2001.

The Department's separate rate test is not concerned, in general, with macroeconomic border-type controls (e.g., export licenses, quotas, and minimum EPs), particularly if these controls are imposed to prevent dumping. Rather, the test focuses on controls over the export-related investment, pricing, and output-decision-making process at the individual firm level. See *Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value*, 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997); and *Honey from the People's Republic of China: Preliminary Determination of Sales at Less than Fair Value*, 60 FR 14725, 14726 (March 20, 1995). In determining whether the export licensing system for Chinese honey is consistent with the application of separate rates to eligible exporters for purposes of this investigation, we believe it is appropriate to focus on the export licensing system and minimum price floor currently in effect rather than the system in effect during the POI because the system in effect during the POI was largely driven and governed by the Agreement which has since been terminated.

In the Department's preliminary determination in the original antidumping duty investigation of honey from the PRC (see Notice of Preliminary Determination of Sales at Less than Fair Value: Honey from the People's Republic of China, 60 FR 14725 (March 20, 1995)) (Preliminary Determination), the Department determined that the existence of the export licensing system and minimum price floor for exports of Chinese honey to the United States were consistent with the Department's determination to grant separate rates to certain exporters of Chinese honey. We preliminarily determine in this investigation that the export licensing system and minimum price floor for exports of Chinese honey to the United States currently in effect are nearly identical to those examined

in the original investigation and as a result are also consistent with the application of separate rates to those exporters who otherwise qualify. The bidding process, as described on the record, permits independent export pricing decisions and the export volume system operates on the basis of transparent and well-defined rules. All eligible exporters are free to bid for the right to export honey according to their own business plans. Further, exporters are free to independently negotiate EPs with their customers above the minimum EP. Allocation of export limits takes place in a competitive manner and exporters compete with each other for customers in the global marketplace. Thus, the export licensing system and minimum EP currently in effect does not involve the type of de jure government control over export pricing and marketing decisions that would preclude respondents from being eligible to receive separate rates.

With respect to the claims for entitlement to separate rates put forth by Inner Mongolia, Kunshan, Zhejiang, High Hope, Shanghai Eswell, Anhui, and Henan, as stated in the Final Determinations of Sales at Less-Than-Fair-Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994) (Silicon Carbide), and Final Determination of Sales at Less than Fair Value: Furfuryl Alcohol, 60 FR 22545 (May 8, 1995) (Furfuryl Alcohol), ownership of a company by "all the people" does not require the application of a single rate. As noted above, the Department's test for separate rates focuses on controls over export-related investment, pricing, and output decision-making process at the individual firm level. To establish whether a firm is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588 (May 6, 1991), and amplified in Silicon Carbide. Under this test, the Department assigns separate rates in NME cases only if an exporter can affirmatively demonstrate the absence of both (1) de jure and (2) de facto governmental control over export activities. See Silicon Carbide and Furfuryl Alcohol.

#### *1. Absence of De Jure Control*

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business

and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

Inner Mongolia, Kunshan, Zhejiang, High Hope, Shanghai Eswell, Anhui, and Henan, have placed on the record a number of documents to demonstrate absence of de jure control, including the "Foreign Trade Law of the People's Republic of China," promulgated on May 12, 1994, the "Law of the People's Republic of China in Industrial Enterprises Owned by the Whole People," adopted on April 13, 1998 (1988 Law), the "Law of the People's Republic of China on Chinese-Foreign Cooperative Joint Ventures," and "Regulations for Transformation of Operational Mechanism of State-Owned Enterprises," effective as of July 23, 1992 (1992 Regulations).

In prior cases, the Department has analyzed the 1988 Law and 1992 Regulations and found that they establish an absence of de jure control. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China, 60 FR 54472 (October 24, 1995). We have no new information in this proceeding which would cause us to reconsider this determination.

As stated in previous cases, there is some evidence that the provisions of the above-cited 1988 Law and 1992 Regulations regarding enterprise autonomy have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. See "PRC Government Findings on Enterprise Autonomy," in Foreign Broadcast Information Service-China-93-133 (July 14, 1993). Therefore, the Department has determined that an analysis of de facto control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

## 2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to de facto governmental control of its export functions: (1) Whether the EPs are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes

independent decisions regarding disposition of profits or financing of losses.

Inner Mongolia, Kunshan, Zhejiang, High Hope, Shanghai Eswell, Anhui, and Henan assert the following: (1) They each establish their own EPs independent of the government and without the approval of a government authority; (2) they each negotiate contracts, without guidance from any governmental entities or organizations; (3) they each make their own personnel decisions including the selection of management; and (4) they each retain the proceeds of their export sales, and utilize profits according to business needs. This information supports a preliminary finding that there is a de facto absence of governmental control of the management of these exporters. The de facto impact of the regulatory provisions embodied in the above-referenced laws and regulations, including those governing the administration of the Agreement, do not constitute the degree of control of these firms which would preclude the calculation of antidumping rates based on their own, separate competitively-set prices.

Consequently, we preliminarily determine that Inner Mongolia, Kunshan, Zhejiang, High Hope, Shanghai Eswell, Anhui, and Henan have met the criteria for the application of separate rates. We will examine this matter further at verification.

Since Inner Mongolia, Kunshan, Zhejiang, High Hope, Shanghai Eswell, Anhui, and Henan, are the only responding producers/exporters and they do not account for all shipments of subject merchandise to the United States during the POI, we preliminarily determine, as facts available, that all other, non-responsive, producers/exporters have not met the criteria for application of separate rates. See the discussion of the PRC-wide rate below.

## Margins for Cooperative Exporters Not Selected

The exporters who responded to Section A of the Department's antidumping questionnaire but were not selected as respondents in this investigation (High Hope, Shanghai Eswell, Anhui, and Henan) have applied for separate rates, and provided information for the Department to consider for this purpose. Although the Department is unable, due to administrative constraints (see Respondent Selection Memo), to calculate for each of these named parties who are exporters a rate based on their own data, these companies cooperated in providing all the information that the

Department requested of them. For High Hope, Shanghai Eswell, Anhui, and Henan, we have calculated a weighted-average margin based on the rates calculated for those exporters that were selected to respond in this investigation. Companies receiving this rate are identified by name in the "Suspension of Liquidation" section of this notice.

## The PRC-Wide Rate

All exporters were given the opportunity to respond to the Department's questionnaire. As explained above, we received timely responses from Inner Mongolia, Kunshan, and Zhejiang, for which we have calculated company-specific rates, and timely responses to Section A of the Department's antidumping questionnaire from High Hope, Shanghai Eswell, Anhui, and Henan for which we have assigned a margin based on the weighted-average rate of the calculated company-specific rates of Inner Mongolia, Kunshan, and Zhejiang. U.S. import statistics indicate that the total quantity and value of U.S. imports of honey from the PRC is greater than the total quantity and value of honey reported by the seven PRC producers/exporters that submitted responses in this investigation. For this reason, we preliminarily determine that some PRC exporters of honey failed to respond to our questionnaire. Consequently, we are applying a single antidumping rate—the PRC-wide rate—to all other exporters in the PRC based on our presumption that those respondents who failed to demonstrate entitlement to a separate rate constitute a single enterprise under common control by the government of the PRC. See, e.g., Final Determination of Sales at Less Than Fair Value: Synthetic Indigo from the People's Republic of China, 65 FR 25706, 25707 (May 3, 2000) (Synthetic Indigo). The PRC-wide rate applies to all entries of subject merchandise except for entries from Inner Mongolia, Kunshan, Zhejiang, High Hope, Shanghai Eswell, Anhui, and Henan.

## Use of Facts Otherwise Available

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

Department shall not decline to consider submitted information if that information is necessary to the determination but does not meet all of the requirements established by the Department provided that all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Section 776(a)(2)(B) of the Act requires the Department to use facts available when a party does not provide the Department with information by the established deadline or in the form and manner requested by the Department. In addition, section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of that party as facts otherwise available.

#### **PRC-Wide Rate**

As explained above, the exporters comprising the single PRC-wide entity failed to respond to the Department's request for information. Pursuant to section 776(a) of the Act, in reaching our preliminary determination, we have used total facts available for the PRC-wide rate because we did not receive the data needed to calculate a margin for that entity. Also, because the exporters comprising the PRC-wide entity failed to respond to the Department's requests for information, the Department has found that the PRC-wide entity failed to cooperate to the best of its ability. Therefore, pursuant to section 776(b) of the Act, we have used an adverse inference in selecting from the facts available for the margin for that entity. As adverse facts available, we assigned the highest margin based on information in the petition, because the margins derived from the petition are higher than the calculated margins for the selected respondents.

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on "secondary information," such as the petition, the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action accompanying the URAA, H.R. Doc. No.

103-316, (1994) (SAA), states that "corroborate" means to determine that the information used has probative value. See SAA at 870.

The petitioners' methodology for calculating the EP and NV, in the petition, is discussed in the initiation notice. To corroborate the petitioners' EP calculations, we compared the prices in the petition to the prices submitted by respondents for the same honey product. To corroborate the petitioners' NV calculations, we compared the petitioners' factor consumption data to the data reported by the respondents, and the surrogate values for these factors in the petition to the values selected for the preliminary determination.

As discussed in the Memorandum to the file entitled Corroboration of the Petition Data for the PRC-wide entity, dated May 4, 2001, we found that the EP and factors of production information in the petition were reasonable and of probative value. As a number of the surrogate values selected from the preliminary determination differed from those used in the petition, notably the value for raw honey and ratio for factory overhead, we compared the petition margin calculations to the calculations based on the selected surrogate values wherever possible and found them to be reasonable. Therefore, we preliminarily determine that the petition information has probative value. Accordingly, we find that the highest margin from the petition, 183.80 percent, is corroborated within the meaning of section 776(c) of the Act.

#### **Fair Value Comparisons**

To determine whether sales of honey from the PRC were made in the United States at less than fair value, we compared EP to NV based on an NME analysis, as described below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs.

#### **Export Price**

We used EP methodology in accordance with section 772(a) of the Act because Inner Mongolia, Kunshan, and Zhejiang sold the subject merchandise directly to unaffiliated purchasers in the United States and because CEP methodology was not otherwise appropriate. We calculated EP based on packed FOB or, where appropriate, C & F prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for inland freight from the plant/warehouse to the port of exportation, and any insurance,

brokerage and handling charges paid by Inner Mongolia, Kunshan, and Zhejiang, in the PRC. Because certain domestic factors, such as inland freight, insurance, brokerage and handling were provided by NME companies, we valued those factors using surrogate rates from India. Where appropriate, we calculated expenses which were incurred in U.S. dollars (i.e., international freight) based on the actual U.S. dollar amounts paid for such expenses. (See Memoranda from the Team to the File regarding Margin Analysis for Kunshan and Xinlong, Inner Mongolia and Sheng Li, and Zhejiang, Hubei and Hangzhou, dated May 4, 2001 (Margin Analysis Memoranda)).

#### **Normal Value**

##### *1. Surrogate Country*

Section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market economy countries that: (1) are at a level of economic development comparable to that of the NME country; and (2) are significant producers of comparable merchandise. The Department initially determined that India, Pakistan, Indonesia, Sri Lanka, and the Philippines were the countries most comparable to the PRC in terms of overall economic development (see the January 9, 2001 memorandum, Antidumping Duty Investigation on Honey from the People's Republic of China: Nonmarket Economy Status and Surrogate Country Selection).

We have relied, where possible, on information from India, as it is the source of the most complete information and the only country from among the potential surrogate countries that produces comparable merchandise in commercial quantities. Accordingly, we have calculated NV by applying Indian values to virtually all of Inner Mongolia's, Kunshan's, and Zhejiang's factors of production. See Margin Analysis Memoranda.

##### *2. Factors of Production*

In accordance with section 773(c)(4) of the Act, we calculated NV based on factors of production as reported by Inner Mongolia and its supplier (Inner Mongolia Sheng Li Food Co. Ltd. (Sheng Li)), Kunshan and its supplier (Kunshan Xinlong Food Co. Ltd. (Xinlong)), and Zhejiang and its suppliers (Hubei Yangziji Jiang Apiculture Co. Ltd. (Hubei)) and Hangzhou Green Forever Apiculture (Group) Co. (Hangzhou)) for the POI. To calculate NV, the reported per-unit factor quantities were multiplied by publicly available Indian

surrogate values (except as noted below).

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to convert them to delivered prices. When we used Indian import values to value inputs sourced domestically by the Chinese producers, we added to Indian surrogate values a surrogate freight cost calculated using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401 (Fed. Cir. 1997). When we used non-import surrogate values for factors sourced domestically by the Chinese producers, we based freight for inputs on the actual distance from the input supplier to the site at which the input was used. For those values not contemporaneous with the POI, we adjusted for inflation using wholesale price indices published in the International Monetary Fund's International Financial Statistics.

To value raw honey, we used an average of the highest and lowest price for raw honey given in an article published in *The Tribune of India* on January 3, 2000, entitled, "Apiculture, a major foreign exchange earner."

To value electricity, we used publicly available per kilowatt hour electricity charges as reported in the financial statements of seven Indian companies, as adjusted for inflation, for the period April 1, 1998 through March 31, 1999.

To value coal, we used the per kilogram rupee price, adjusted to the POI, as reported in the April 1, 1999 through March 31, 1999 Annual Report for Polychem, an Indian manufacturer.

To value water, we used publicly available water tariff rates (as of 1995–1996 for three areas in India: Chennai, Delhi, and Mumbai) reported in the second Water Utilities Data Book: Asian and Pacific Region, published by the Asian Development Bank.

We valued labor using the U.S. dollar-denominated regression-based wage rate, adjusted to the POI (i.e., US\$0.80) in accordance with 19 CFR 351.408(c)(3).

To value beeswax, a raw honey by-product, we used the average per kilogram import value of beeswax into India from April 1998 to December 1998, adjusted for inflation. Because there is no information on the record at this time for another raw honey by-product, scrap honey, we are not valuing this factor for purposes of our

preliminary determination. We will continue to search for an appropriate value for scrap honey, and include our findings in our final determination.

To value truck freight rates, we used freight costs, adjusted for inflation, based on Indian domestic prices of truck freight rates (for the period of October 1998 through March 1999) as published in the *Economic Times*, an Indian newspaper.

As a surrogate value for rail transportation, we used the average train freight rates in India for fruit juices and syrups, published in November 1999, and adjusted for inflation.

To value inland water transportation, we used the surrogate value, adjusted for inflation, for inland water freight used in the Preliminary Results of the Antidumping Duty Administrative Review: Certain Helical Spring Lock Washers from the People's Republic of China, 65 FR 5493 (September 8, 2000). This rate was reported to the Department in the August, 1993 cable from the U.S. Embassy in India.

For brokerage and handling, we used price quotes from two Indian freight forwarders in November 1999, and adjusted for inflation.

We based our calculation of factory overhead, selling, general, and administrative (SG&A) expenses on actual data reported in the 1998–1999 annual report of the Mahabaleshwar Honey Producers Cooperative Society, Ltd. (MHPC), a producer of the subject merchandise in India, as adjusted for inflation.

We valued packing materials (iron drums) on an offer for sale from an Indian manufacturer of iron drums (September 2000).

For a complete analysis of surrogate values, see Margin Analysis Memoranda.

#### Critical Circumstances

On February 23, 2001, petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of honey from the PRC. In accordance with 19 CFR 351.206(c)(2)(i), given that this allegation was filed at least 20 days prior to the preliminary determination, the Department must issue its preliminary critical circumstances determination no later than the preliminary determination.

Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the

United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

#### History of Dumping or Importer Knowledge of Dumping

To determine whether there is a history of injurious dumping of the merchandise under investigation, the Department considers evidence of an existing antidumping order on honey from other countries to be sufficient. We are unaware of any antidumping order on honey from the PRC worldwide. Petitioners stated in their allegation of critical circumstances that the Preliminary Determination and the Agreement from the original investigation of honey from the PRC (1995) sufficiently establishes a history of injurious dumping in the PRC with respect to subject merchandise. The Department, however, does not consider either a preliminary determination or the existence of a suspension agreement as sufficient evidence of a history of injurious dumping of honey. Therefore, the Department must examine part (ii) of the first prong of the critical circumstances test.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that the exporter was selling honey at less than fair value, the Department normally considers margins of 25 percent or more for EP sales sufficient to impute knowledge of dumping. (See, e.g., Preliminary Determination of Critical Circumstances: Certain Small Diameter Carbon and Alloy Steel Seamless Standard, Line and Pressure Pipe from the Czech Republic, 65 FR 33803, 33803 (May 25, 2000)). In the instant case, we have preliminarily determined that the margins for the three mandatory respondents, Inner Mongolia, Kunshan, and Zhejiang, are 44.00, 37.51, and 36.98 percent, respectively. We have preliminarily determined that the margin for each of the four cooperative respondents for which we only examined the separate rates portion of the questionnaire, (High Hope, Shanghai Eswell, Anhui, and Henan) is 39.76 percent. Furthermore, the margin preliminarily assigned to the PRC-wide entity (the remaining exporters) is 183.80 percent. Therefore, we have

imputed knowledge of dumping to importers of the subject merchandise from each of the seven cooperating exporters and to the importers of subject merchandise from all other producers/exporters in the PRC.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that there was likely to be material injury by reason of dumped imports, the Department normally will look to the preliminary injury determination of the International Trade Commission (ITC). If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute importer knowledge that there was likely to be material injury by reason of dumped imports. In this case, the ITC has found that a reasonable indication of present material injury due to dumping exists for subject imports of honey from the PRC. See *Honey from the PRC*, 65 FR 69573 (November 17, 2000). As a result, the Department has determined that there is a reasonable basis to believe or suspect that importers of honey from the PRC from all exporters knew or should have known that there was likely to be material injury by reason of dumped imports of the subject merchandise from the PRC.

#### Massive Imports

In determining whether there are "massive imports" over a "relatively short period," pursuant to section 733(e)(1)(B) of the Act, the Department normally compares the import volume of the subject merchandise for at least three months immediately preceding the filing of the petition (i.e., the "base period"), and a comparable period of at least three months following the filing of the petition (i.e., the "comparison period"). However, as stated in section 351.206(i) of the Department's regulations, if the Secretary finds that importers, exporters, or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, then the Secretary may consider a time period of not less than three months from that earlier time. Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.

In this case, the petition was filed on September 29, 2000. On April 2, 2001, Inner Mongolia, Kunshan, Zhejiang, High Hope, Shanghai Eswell, Anhui, and Henan provided monthly shipment

data for February 1999 through February 2001 for exports of subject merchandise to the United States. Thus, we were able to obtain exporter-specific shipment data for a period encompassing 5 months prior to and 5 months after the filing of the petition. On an exporter-specific basis, we then compared Inner Mongolia's, Kunshan's, Zhejiang's, High Hope's, Shanghai Eswell's, Anhui's, and Henan's monthly shipments from May 2000 through September 2000 to their monthly shipments from October 2000 through February 2001. Additionally, we compared the exporter-specific monthly shipments from May 1999 through September 1999 to monthly shipments from October 1999 to February 2000 to determine whether any increases between the base and comparison periods in 2000 could be attributable to other factors, including seasonal trends.

Pursuant to 19 CFR 351.206(h) we will not consider imports to be massive unless imports in the comparison period have increased by at least 15 percent over imports in the base period. We find that of the seven companies examined, imports of honey from High Hope and Zhejiang showed post-filing increases of at least 15 percent over the base period for which no other factors appear to be responsible. While imports from Inner Mongolia in the comparison period in 2000/2001 were also more than 15 percent greater than those in the base period, we also found a similar increase during the fall/winter of 1999/2000 when compared to the spring/summer base period in 1999. This leads us to conclude that the increase in imports from Inner Mongolia in the comparison period in 2000/2001 was attributable to factors other than the filing of the petition, such as seasonality. Imports from Kushan, Shanghai Eswell, Anhui, and Henan did not show an increase of more than 15 percent during the post-filing comparison period. Therefore, the Department did not find critical circumstances with respect to these exporters.

Because the PRC-wide entity failed to respond to our initial antidumping questionnaire, the Department, pursuant to section 776(a) of the Act has based its critical circumstances determination on the facts available. Further, because this entity did not act to the best of its ability to respond to the Department's questionnaires, we have, pursuant to section 776(b) of the Act, used an adverse inference in selecting from the facts available. We used U.S. Customs import statistics to determine whether there were additional imports during the base and the comparison periods not accounted for in the shipment data for

the seven exporters named above. We found that there were such shipments but we were unable to distinguish the distribution of individual exporters in the data. Therefore, because we have no independent means by which to determine import levels for the PRC-wide entity, we have made an adverse inference and preliminarily determined that critical circumstances exists for the PRC-wide entity. See Memo to Richard Weible regarding Preliminary Affirmative and Negative Determinations of Critical Circumstances, May 4, 2001 (CC Memo).

In their April 2, 2001 submission, respondents argue that, when analyzing their export data, the Department must take into consideration two factors that they claim significantly influenced the recent export patterns of honey from the PRC. First, they argue that substantial uncertainty existed concerning exports of honey from the PRC during the summer of 2000 because of the Department's delay in completing an administrative review of the Agreement underway during that time period. This market confusion was then further increased by the uncertainty over the amount of quota and reference prices that could potentially apply to honey exports on and after August 1, 2000. As a result, respondents argue, exporters either ceased or significantly decreased their exports to the United States during the summer. Any subsequent increase in exports, they argue, is accordingly due to this abnormal period of suppressed exports. Second, the Department must also consider that many honey exporters export less honey during July, August, and September, they argue, because they are busy during those months purchasing and processing honey for export later in the year.

With respect to the first argument, our initial comparison of export levels in the 2000 base period and the 1999 base period shows that High Hope's and Zhejiang's exports and exports for the PRC-wide entity during the 2000 base period were not "suppressed." With respect to the second argument, a comparison of the 2000 data for July, August, and September and for October, November, and December with the 1999 data for the same months for these entities does not initially appear to support the claim that exports of honey are normally lower during those months. See CC Memo. However, we will verify the data with respect to this issue and consider these arguments further for purposes of the final determination of critical circumstances.

In summary, we find that there is a reasonable basis to believe or suspect that importers had knowledge of

dumping and the likelihood of material injury with respect to imports of honey from the PRC, and that there have been massive imports of honey from High Hope, Zhejiang, and the PRC-wide entity over a relatively short period of time. As a result, we preliminarily determine that critical circumstances exist for imports of honey from High Hope, Zhejiang, and the PRC-wide entity, in accordance with section 733(e)(2) of the Act. Because we did not find that massive imports, within the meaning of 19 CFR 351.206(h), existed for Inner Mongolia, Kunshan, Shanghai Eswell, Anhui, and Henan, we preliminarily determine that critical circumstances do not exist for imports of honey from these companies. See CC Memo.

#### Verification

In accordance with section 782(i) of the Act, we intend to verify all information relied upon in making our final determination.

#### Final Critical Circumstances Determination

We will make a final determination concerning critical circumstances for the PRC when we make our final determination regarding sales at LTFV in this investigation, which will be no later than 135 days after the publication of this notice in the **Federal Register**.

#### Suspension of Liquidation

In accordance with section 733(e)(2) of the Act, for High Hope, Zhejiang, and the PRC-wide entity, the Department will direct the Customs Service to suspend liquidation of all entries of subject merchandise from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date of publication of this notice in the **Federal Register**. For the remaining companies (i.e., Inner Mongolia, Kunshan, Shanghai Eswell, Anhui, and Henan), the Department will direct the Customs Service to suspend liquidation of all entries of subject merchandise from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin indicated in the chart below. This suspension of liquidation will remain in effect until further notice.

The margin in the preliminary determination is as follows:

Exporter/ manufacturer	Margin (percent)	Critical circumstances
Inner Mongolia	44.00	No.
Kunshan .....	37.51	No.
Zhejiang .....	36.98	Yes.
High Hope .....	39.76	Yes.
Shanghai	39.76	No.
Eswell.		
Anhui .....	39.76	No.
Henan .....	39.76	No.
PRC-wide Entity.	183.80	Yes.

#### Disclosure

The Department will disclose calculations performed within five days of this determination to the parties to the proceeding in this investigation in accordance with 19 CFR 351.224(b).

#### International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine, before the later of 120 days after the date of this preliminary determination or 45 days after our final determination, whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

#### Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. In the event that the Department receives requests for hearings from parties to more than one honey case, the Department may schedule a single hearing to encompass all those cases.

Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. Interested parties who wish to request a hearing, or participate if one is requested, must submit a written request within 30 days of the publication of this notice. Oral presentations will be limited to issues raised in the briefs. We will make our final determination no later than 75 days after the date of publication of this preliminary determination.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: May 4, 2001.

**Bernard T. Carreau,**

*Deputy Assistant Secretary, Import Administration.*

[FR Doc. 01-11940 Filed 5-10-01; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-357-812]

#### Notice of Preliminary Determination of Sales at Less Than Fair Value: Honey From Argentina

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** May 11, 2001.

**FOR FURTHER INFORMATION CONTACT:** Melissa Blackledge, Charlie Rast or Donna Kinsella at (202) 482-3518, (202) 482-1324 or (202) 482-0194, respectively; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

#### The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 351 (April 2000).

#### Preliminary Determination

We preliminarily determine that honey from Argentina is being sold, or