

June 9, 2006

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results in the
2003-2004 Administrative Review of Honey from the People's
Republic of China

SUMMARY:

We have analyzed the briefs and rebuttal briefs of interested parties in the 2003/2004 administrative review of honey from the People's Republic of China (PRC). As a result of our analysis, we have made certain changes from the preliminary determination. *Honey from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 74764 (December 16, 2005) (*Preliminary Results*). We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is the complete list of the issues in this administrative review:

Changes from the Preliminary Results

General Issues

- Comment 1: Appropriate Surrogate Value for Honey
- Comment 2: Selection of Surrogate Financial Ratios
- Comment 3: Calculation of the MHPC Financial Ratios
- Comment 4: Brokerage and Handling Expenses
- Comment 5: Calculation of the Surrogate Wage Rate
- Comment 6: Calculation of Employee Benefits in Financial Ratios

Company-Specific Issues

Shanghai Eswell-Related Issues

- Comment 7: Valuation of By-Product for Eswell
- Comment 8: Calculation of Indirect Selling Expenses for Eswell

Jiangsu Kanghong-Related Issues

Comment 9: Appropriate Factors of Production to Value for Jiangsu Kanghong

Background

We published the preliminary results in the 2003-2004 administrative review in the *Federal Register* on December 16, 2005. *See Preliminary Results.* The period of review (POR) is December 1, 2003 through November 30, 2004. We received one case brief from respondents Anhui Honghui Foodstuff (Group) Co., Ltd (Anhui Honghui), Jiangsu Kanghong Natural Healthfoods Co., Ltd (Jiangsu Kanghong), and Zhejiang Native Produce and Animal By-Products Import & Export Group Corp. (Zhejiang) on February 21, 2006 (collectively, GDLSK respondents). On the same date we received a case brief from respondent Shanghai Eswell Enterprise Co., Ltd. (Eswell). Respondent Jinfu Trading Co., Ltd. (Jinfu) did not submit a case or rebuttal brief. Hereafter, Anhui Honghui, Jiangsu Kanghong, Zhejiang, Eswell, and Jinfu are referred to collectively as “the respondents.” We received rebuttal briefs from the American Honey Producers Association and the Sioux Honey Association (collectively, petitioners), on February 28, 2006. The Department also requested comment on its recent decision that employee benefits (*i.e.*, pension and social security expenses) should be reclassified from direct labor to manufacturing overhead in the financial ratios calculation. *See Folding Metal Tables and Chairs from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 2905 (January 18, 2006) (*Tables and Chairs*), and accompanying Issues and Decision Memorandum, at Comment 1B. We received comments from Eswell and petitioners on this issue.

DISCUSSION OF THE ISSUES:

Changes from the Preliminary Results

Based on the determinations below, we have made revisions to the data used for the final results. For further details, please see the Anhui Honghui Final Analysis Memorandum; Jiangsu Kanghong Final Analysis Memorandum; Jinfu Final Analysis Memorandum; Eswell Final Analysis Memorandum; and Zhejiang Final Analysis Memorandum, all dated June 9, 2006, which are on file in Import Administration’s Central Records Unit, room B-099 of the Department of Commerce building.

Comment 1: Appropriate Surrogate Value for Honey

GDLSK respondents state that the Department has broad discretion in determining the “best available information” to be used as surrogate values. However, GDLSK respondents argue, this discretion is constrained by the underlying objective of the statute, which is to obtain the most accurate dumping margins possible, according to court decisions such as *CITIC Trading Co. v. United States*, 2003 Ct. Intl. Trade LEXIS 33, Slip Op. 2003- 23, n.12 (CIT 2003). The Department, GDLSK respondents argue, cannot be said to have applied the best available information if the surrogate value it selects produces less accurate results than other potential surrogate values the Department did not select. Furthermore, GDLSK respondents claim, the Department is required to use surrogate values that reflect the costs respondents would incur if

they were operating in a market economy. Therefore, GDLSK respondents claim, the Department cannot rely on surrogate values that lead to anomalous results. GDLSK respondents state that one way the Department avoids doing this is by comparing its surrogate values to benchmark prices. The Department also, GDLSK respondents claim, prefers to rely on broad, representative data, rather than data from a single producer or region. Its discretion, however, GDLSK respondents contend, is limited by the requirement that its decisions be reasonable in light of the facts on the record. GDLSK respondents state the Department's decision, therefore, must be based on facts as a whole. *See GDLSK Respondents' Administrative Case Brief: Honey from the People's Republic of China to the Secretary of Commerce*, dated February 21, 2006, (GDLSK Respondents' Brief), at 4-7.

GDLSK respondents state that for the *Preliminary Results* the Department relied on data from EDA Rural Systems Pvt. Ltd.'s website (EDA data), which provide prices paid to beekeepers in the Muzaffarpur region of India for 1,825 metric tons (MT) of raw honey from December 2002 to June 2003. The Department, GDLSK respondents continue, then inflated the base price of 76.01 rupees per kilogram (Rs/kg) by the Indian wholesale price index (WPI) to make the price contemporaneous to the POR. GDLSK respondents claim the raw honey value represents about 60 percent of the normal value calculation. Next, GDLSK respondents state, the Department added other material costs and labor, added in financial ratios –which account for about 30 percent of normal value, and packing costs, and deducted by-products where necessary. The resulting normal value for Zhejiang, for example, GDLSK respondents state, led to an average normal value of USD 3,000 per MT for processed honey in the *Preliminary Results*, and margins for all respondents ranging from 151.13 percent to 151.80 percent. These prohibitive margins, GDLSK respondents argue, are not a result of the respondents' failure to cooperate, but rather the Department's use of EDA data to value raw honey and Mahabaleshwar Honey Producers' Cooperative (MHPC) data to value the financial ratios. *See GDLSK Respondents' Brief* at 7-9.

GDLSK respondents claim that surrogate value data they placed on the record of this review show that the surrogate value for honey used by the Department is anomalous. They cite World Trade Atlas (WTA) data, representing the prices of honey exported from India, showing an average price of 76.97 Rs/kg for processed honey during the POR, and India Infoline data, representing India exports of processed and unprocessed honey, showing an average price of honey during the POR of 74.11 Rs/kg. GDLSK respondents argue that given that the average price of honey exported from India, according to these sources, averaged between USD 1,600 and 1,700 per MT, the Department cannot reasonably conclude that the surrogate value of Indian honey is 3,000 per MT. Using a price of 81.77 Rs/kg for raw honey, as the Department is doing GDLSK respondents contend, leads to a "logic-defying" 135 Rs/kg in the cost build up for processed honey in the normal value calculation. This price is "absurd," GDLSK respondents contend, because India producers would not pay more for raw honey than the price they charge to export processed honey. The Department found in the preliminary results of honey from Argentina¹ for the same time period, according to GDLSK respondents, that one Argentinean company sold processed honey to the United States for about \$1,703 per MT, with a minimal 2.95 percent dumping margin. These prices, GDLSK respondents argue, show that the

¹ *See Honey from Argentina: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Intent Not to Revoke in Part*, 70 FR 76766, 76770 (December 28, 2005).

Department used an anomalous surrogate value and should modify the way it calculates the raw honey surrogate value in these final results. *See* GDLSK Respondents' Brief at 9-12.

The Department, GDLSK respondents argue, prefers to use surrogate value data contemporaneous with the POR, which is essential when valuing a commodity such as honey. The EDA data, GDLSK respondents contend, are outside the POR and based solely on prices from the first half of 2003, when honey prices reached their peak. The EDA prices, GDLSK respondents claim, do not reflect the honey market in India during the POR. GDLSK respondents cite three contemporaneous and publicly available raw honey surrogate value sources on the record of this review: 1) "Honey Sweet Despite Price Fall," published in the *Tribune of India* on December 15, 2003 (Tribune article); 2) "There is Money in Honey," published in the *Business Line* Internet edition on January 26, 2004 (Money article); and 3) "Self-help Groups Set up in the Sunderbans," published in *The Hindu* on March 5, 2004 (Sunderbans article). The prices in these articles, GDLSK respondents state, are 65 Rs/kg, 50 Rs/kg, and 40 Rs/kg, respectively. GDLSK respondents argue that these prices should be further adjusted but represent a reasonable basis for the raw honey value during the POR. *See* GDLSK Respondents' Brief at 12-13.

GDLSK respondents argue that these three sources are reliable. The Department, GDLSK respondents state, used the Tribune article to value raw honey in a previous new shipper review² of honey from the PRC. The Money article, according to GDLSK respondents, was rejected by the Department in the *Preliminary Results* because it found the article not representative of country-wide prices since the article cites prices paid to beekeepers in the Chandram society. According to the EDA website, GDLSK respondents contend, its data come from three sub-regions of Bihar; therefore, the EDA data are not actually representative of more than one region in India. Comparatively, GDLSK respondents argue, the Money article and EDA data should therefore be regarded on the same footing, with preference given to the Money article because it is contemporaneous with the POR. GDLSK respondents cite *Shanghai Foreign Trade Enterprises Co., Ltd. v. United States*, 318 F. Supp. 2d 1339, 1349 (2004), as requiring the Department to be consistent in its surrogate value process, *i.e.*, not rejecting one data source which suffers from the same defects as the source upon which it relies. Finally, GDLSK respondents claim, the Sunderbans article is reliable because although it is region-specific, like the Money article and EDA data, it is contemporaneous to the POR. GDLSK respondents suggest the Department average the three prices from these articles and value raw honey at 52 Rs/kg for these final results. GDLSK respondents also state that this price should be further adjusted, but at the very least the Department should use the 52 Rs/kg as its basis for valuing raw honey. *See* GDLSK Respondents' Brief at 13-15.

The Department should not ignore, GDLSK respondents argue, the fact that record evidence suggests that raw honey prices in India peaked in mid-year 2003 and continued to fall during the instant POR. Therefore, GDLSK respondents claim, the Department was wrong to inflate the EDA data in the instant POR because that assumes prices in India have increased while, in fact, the opposite is true. GDLSK respondents cite emails the Department sent to gather information

² See *Honey From the People's Republic of China: Notice of Final Results of Antidumping Duty New Shipper Reviews*, 70 FR 9271 (February 25, 2005) (NSR4 Final Results), and accompanying Issues and Decision Memorandum, at Comment 1.

on Indian honey prices, other newspaper articles, such as “Prospects of Beekeeping in Rubber Plantation of Kerala” published in September 2003 on IndiaInfoline.com (Kerala article), World Trade Atlas (WTA) export and import data, and India Infodrive export data, as record sources that support GDLSK respondents’ conclusion that raw honey prices have declined significantly since mid-year 2003. GDLSK respondents note that in the *Preliminary Results*, the Department stated that respondents’ information did not outweigh sources placed on the record by petitioners. GDLSK respondents point to problems in the petitioners’ record sources, however, such as the article that mentions high quality honey being sold at 90 Rs/kg, based on retail prices for half a kilogram, while respondents’ record sources cite prices for commercial quantities. The quantities, GDLSK respondents claim, in other news articles petitioners placed on the record are similarly small and, therefore, the prices in those articles cannot be relied on, or compared to, the import and export data respondents gathered. *See* GDLSK Respondents’ Brief at 15-19.

GDLSK respondents state that the news articles placed on the record after the *Preliminary Results* in the instant review also show a decline in prices during the POR. The Sunderbans article, GDLSK respondents state, reports a price of 40 Rs/kg; an article titled “On the Honey Highway,” dated January 21, 2005, has a price of 50 to 60 Rs/kg (Highway article); the *Deccan Herald* article “Solutions for Agri-Entrepreneurs,” published on May 9, 2005 (Deccan article) shows a price of 40 Rs/kg; a comprehensive discussion in beekeeping in India, dated May 21, 2005, (Unnamed article) cites a price to beekeepers of 25 to 45 Rs/kg; and the chief executive officer of an Indian honey producer states in a transcript of a conference call regarding annual results earnings that the last quarter of 2004 witnessed “a very sharp reduction” in honey prices (CEO conference call). The Department’s independent research, GDLSK respondents argue, also showed prices in the 30 to 60 Rs/kg range, and information from the concurrent Argentinean honey antidumping administrative review shows that prices have not increased during the POR. *See* GDLSK Respondents’ Brief at 19-20.

In sum, GDLSK respondents contend that the Department should value honey using an average of the three record sources that results in the raw honey value of 52 Rs/kg, and should adjust this price further to reflect the downward trend of prices in India during the POR. Alternatively, according to GDLSK respondents, if the Department continues to rely on the EDA data, it should deflate the EDA data to reflect the fall in prices during the POR using either the percentage decrease in prices found in the Tribune article or the percentage decrease in prices from the average unit prices for processed honey exported from India. This would be consistent, according to GDLSK respondents, with the Department’s methodology in the first administrative review of honey from the PRC,³ when the Department used price quotes to inflate raw honey prices in India to capture the reality of the Indian raw honey market in a way that the WPI was unable to. *See* GDLSK Respondents’ Brief at 20-21.

Eswell argues that the Department erred in its calculation of the surrogate value for raw honey in the *Preliminary Results* because the EDA data used are not contemporaneous with the instant POR, the EDA data are not reflective of comparable merchandise in the PRC or representative of raw honey prices in India, and the EDA data should not be inflated when reliable evidence shows

³ See *Honey From the People’s Republic of China: Final Results of First Antidumping Duty Administrative Review*, 69 FR 25060 (May 5, 2004) (ARI Final Results), and accompanying Issues and Decision Memorandum, at Comment 3.

that prices in India during the period prior to the POR were not properly reflected in the WPI for the prior period. Eswell states that the Department should rely on two contemporaneous news articles to value raw honey, or, if the Department continues to rely on EDA data, then the Department should use the price of a comparable product to Chinese honey or adjust the price properly to reflect the price changes of Indian raw honey during the prior period. *See Third Administrative Review of Honey from the PRC: Case Brief from Kalik Lewin to the Secretary of Commerce*, dated February 21, 2006, (Eswell Brief), at 1-3.

Eswell argues that the Department's practice in NME proceedings is to use data contemporaneous with the POR and that, while it is not the only factor the Department considers, the Department prefers to use contemporaneous data. Eswell contends that in the instant review the Department can only ensure the most accurate dumping margin by using contemporaneous information. Eswell argues that the Tribune article, which the Department used to value raw honey in the preliminary results of the second administrative review,⁴ shows that honey prices in India fell significantly in 2003. The volatility of raw honey prices during the prior POR (December 2002 to November 2003), Eswell argues, is confirmed by the EDA data itself, which show large price increases in the types of honey recorded during the 2002-2003 period. This demonstrates, Eswell contends, that the data the Department used to value honey in the final results of the second administrative review,⁵ i.e., the EDA data, were aberrational. The Department should, therefore, Eswell states, reject the EDA data as the basis for the raw honey surrogate value. *See Eswell Brief at 3-6.*

Because of the volatility of Indian raw honey prices, Eswell contends, and the aberrational data from the period just prior to the current POR, the Department should place high value on a contemporaneous value. The Money article and Sunderbans article are contemporaneous with the POR, Eswell argues, and contain prices of 50 Rs/kg and 40 Rs/kg, respectively. There is no evidence suggesting these prices are unreliable, Eswell claims, and while the articles may not be representative of country-wide prices, neither are the EDA data. The Tribune article, Kerala article, and Deccan article all corroborate, Eswell states, the Rs 40 to Rs 50 per kg prices of the Money article and Sunderbans article and show that prior, during, and after the POR raw honey prices in India remained in the 40 to 50 Rs/kg price range. Eswell states that the Department should average the Money article and Sunderbans article prices for the POR raw honey surrogate value. The Department, Eswell contends, should choose contemporaneous sources over non-contemporaneous sources in this POR because of its preference for using contemporaneous data when adequate contemporaneous data is available. *See Eswell Brief at 6-9.*

The Department also erred in using the EDA data because it represented a weighted average of price types of honey that are not representative of Chinese honey or Indian honey, Eswell claims, pointing to Exhibit 1 of its February 2, 2006, surrogate value submission (February SV submission). The record of this review, Eswell argues, shows that the most common type of

⁴ *See Honey from the People's Republic of China: Preliminary Results, Partial Rescission, and Extension of Final Results of Second Antidumping Duty Administrative Review*, 69 FR 77184 (December 27, 2004) (AR2 Preliminary Results).

⁵ *See Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 70 FR 38872 (July 6, 2005) (AR2 Final Results), and accompanying Issues and Decision Memorandum, at Comment 1.

honey produced in the PRC is from the rapeseed plant, which is a lower quality honey. India also produces rapeseed honey, Eswell states, yet the Department chose, in using the EDA data, to value honey from litchi, karanj, and tori plants. The litchi and karanj honeys, Eswell contends, which account for the majority of Bihar's honey production according to the EDA website, are higher priced honeys valued for their taste and not comparable to rapeseed honey. Using the EDA data, therefore, Eswell argues, does not constitute use of the "best available information" because the higher priced honeys would not result in the most accurate dumping margin possible, as the courts require. The EDA data do contain prices values for tori honey, which, according to Eswell, is a honey type comparable to Chinese honey. Therefore, Eswell argues, if the Department continues to rely on EDA data to value raw honey, it should only rely on the price for tori honey. *See* Eswell Brief at 9-12.

Finally, the Department erred, Eswell claims, by inflating the EDA data using the WPI. The Department, Eswell argues, uses the WPI in absence of a more product-specific inflation index.⁶ In the *AR1 Final Results*, at Comment 4, Eswell states, the Department adjusted the raw honey value for inflation using price quotes from two Indian companies. In the *AR2 Final Results*, at Comment 1, Eswell continues, the Department used the EDA data, instead of the Tribune article it relied on in the *AR2 Preliminary Results*, for a honey value, yet stated that the Tribune article remains a reliable source for valuing honey. This Tribune article, Eswell claims, shows that raw honey values declined significantly during the second POR and that the Department erred in using the WPI to inflate the EDA data in the second POR. Consistent with Department policy, therefore, for this POR, Eswell claims, the Department should use the Tribune article's price decline to adjust the EDA data to be reflective of the instant POR's honey prices. *See* Eswell Brief at 12-15.

Petitioners argue that respondents' alternatives for valuing raw honey would result in an unreasonable and unrepresentative raw honey value and that the Department's value from the *Preliminary Results* is a reasonable alternative. Petitioners claim that the courts have found that the sources the Department has used to value raw honey are reasonable and supported by substantial evidence, and that this is the case in this proceeding as well. Petitioners state that respondents' claim that 81.77 Rs/kg is an "absurd" raw honey price in the instant POR is not true. They point to flaws in respondents' reasoning, including the fact that domestic values may be higher than export values due to import duties or other market protections. Indian export prices may also be driven by the value of honey in other export markets, due to the role dumped honey from the PRC may play, petitioners contend, noting that the Tribune article cites the role the PRC has had in depressing India's honey prices. Because of such problems with export data, according to petitioners, the Department should not use that information to base its raw honey surrogate value on, which is consistent with the Department's stated preference for using import data for surrogate values. *See* Petitioners' Rebuttal Brief in Honey from the PRC, dated February 28, 2006, (Petitioners' Rebuttal Brief), at 5-7.

Petitioners further state that GDLSK respondents' contention that the Department's raw honey surrogate value leads to an "absurd" normal value is countered by record evidence, an article

⁶ Citing *Notice of Final Results of the Antidumping Duty Administrative Review of Heavy Forged Hand Tools, Finished or Unfinished, with or without Handles, from the People's Republic of China*, 61 FR 51269 (October 1, 1996).

from *The Hindu* published in June 2004 “Tribal Youth Trained in Honey Extraction” (Tribal article), which shows that honey was sold for 160 Rs/kg during the POR. Another *Hindu* article, petitioners state, published in February 2004, “Honey Production Hit by Drought” (Drought article), shows that demand and supply in Andhra Pradesh resulted in processed honey prices of Rs 90 for half a kilogram (or 180 Rs/kg). Though GDLSK respondents’ claim these articles have little probative value, according to petitioners, the retail prices provide a reality check on the appropriateness of the Department’s valuation for raw honey. After adding processing, selling, and distribution costs to a raw honey value of 81 Rs/kg, petitioners argue, the resulting 135 Rs/kg as a wholesale price for processed honey – which GDLSK respondents deemed “logic-defying – in turn yields a rational POR retail price of 160 or 180 Rs/kg. The Argentinean prices quoted by GDLSK respondents reflect one Argentinean company’s sales prices to France and the United States, petitioners contend, and have nothing to do with the economics of honey production in India, especially in light of the fact the company was not subject to a cost of production test. The 81 Rs/kg price, petitioners argue, is not anomalous, therefore, and the benchmarks that respondents claim make the value unreasonable are not related to domestic market value in India and should be disregarded. *See Petitioners’ Rebuttal Brief at 7-9.*

While respondents correctly note that the Department prefers to use contemporaneous surrogate data, according to petitioners, this is only one factor the Department uses to determine appropriate surrogate values. In the *Preliminary Results*, petitioners state, the Department noted that it seeks the best available information on the record and cited the EDA data’s representative nature of the national market, including specific prices for a variety of honey types covering a large section of the territory in which honey is produced in India. Petitioners note the EDA data contain five individually reported varieties of honey and an “other category,” covering two additional honey varieties. The EDA data, petitioners claim, stand in contrast to the three articles that GDLSK respondents contend the Department should use to value raw honey, and are neither collectively nor individually superior to the EDA data. GDLSK respondents’ argued against the use of the Tribune article in the *AR2 Final Results*, at Comment 1, petitioners argue, stating that the prices were internally inconsistent, covered a narrow region, and were uncorroborated. The Department agreed with respondents in that case, according to petitioners, stating the Tribune article was a reliable source yet its data were more marginal, less detailed, and less reliable than the EDA data. Respondents have placed no new information on the record of this review, petitioners argue, to demonstrate that the Tribune article is now superior to the EDA data and, at the most, the Tribune article only covers one month of the current POR. *See Petitioners’ Rebuttal Brief at 9-12.*

The Money article, according to petitioners, presents a snapshot value from one day early in the POR that was paid to the 22-member Chandram Society, which operates from a small rented house in a sub-region of Kerala state. Furthermore, petitioners contend, the article states that the society produced 3,000 kg of honey in 2003, the year prior to the instant POR. The Sunderbans article, petitioners claim, represents prices paid to foragers or collectors of honey from feral bee colonies. Therefore, according to petitioners, the prices the collectors receive would not be comparable to the prices received by bee farmers who cultivate their bees and incur bee colony maintenance costs. In sum, petitioners contend, none of these articles provide average annual prices of substantive quantities for multiple producers in a major beekeeping region in India, and therefore remain inferior to the EDA data. *See Petitioners’ Rebuttal Brief at 12-14.*

Eswell, petitioners maintain, is wrong to ask the Department to value honey according to specific floral types, such as rapeseed. Petitioners state that to the best of their knowledge the Department has never attempted to match raw honey consumption with processed honey output by floral type and that Eswell's request is nothing more than an attempt to cherry-pick a favorable raw honey value. While Eswell claims that record evidence shows that rapeseed honey is the predominant honey type it sold during the POR, petitioners argue there is no such evidence. For instance, petitioners contend that if Eswell sold rapeseed honey, there would be record evidence that it blended its honey or sold it to bakeries. In another example, Eswell's February SV submission shows that rapeseed honey granulates more quickly than clover honey, according to petitioners, making it unlikely that Eswell would ship a product to the United States that would crystallize before it reached that market (rather, it would sell the honey locally). Because it cannot be definitively proven that Eswell, or other respondents, sold only rapeseed honey to the United States, petitioners argue, the Department should not focus the surrogate value of raw honey on rapeseed honey. *See* Petitioners' Rebuttal Brief at 14-16.

Furthermore, evidence that Eswell placed on the record in its February SV submission, petitioners contend, shows that rapeseed production in China is minor, amounting to about 18.5 percent of the Chinese honey crop, meaning the rest of China's honey crop is comprised of flavorful, high-quality honeys such as acacia. From the same record evidence, petitioners claim that India's rapeseed honey crop represents 13 percent of its output. Therefore, petitioners argue, the EDA data are representative of the India and Chinese markets because the EDA's tori data, which are derived from mustard and rapeseed plants, represent eight percent, or a minority, of prices within the EDA data. *See* Petitioners' Rebuttal Brief at 16-17.

Respondents' claims, petitioners allege, that the Department erred in inflating the EDA data to the instant POR, based on two Department e-mails, the Tribune article, and the Kerala article are incorrect. Three of the four sources cited by respondents date from three to four months before the instant POR, petitioners claim, and price patterns in those months may not be applicable to the POR. Furthermore, according to petitioners, the price drop touted in the December 2003 Tribune article still results in a higher price (65 Rs/kg) than the ones cited in the September 2003 Kerala article (average of 41 Rs/kg), meaning the mid-2003 price drop cannot be extended to the instant POR. The Kerala article, petitioners note, has been rejected in past segments of this proceeding, including in the *AR2 Preliminary Results*⁷ and *AR2 Final Results*, at Comment 1. Petitioners argue that the same Department email that GDLSK respondents' claim supports their position of a price drop also discusses China's price-depressing effect on the international honey market, making the Indian export market unreliable for surrogate value pricing information. Petitioners contend that the WTA data placed on the record by GDLSK respondents are incomplete, and even if they were complete, export prices from India to China or Ghana have no real role in corroborating domestic market prices in India. The Sunderbans article, petitioners argue, reflects the price of collected, not cultivated honey, and therefore should not be relied upon to value raw honey. Two other articles, petitioners claim, the Highway article and the Deccan article, cited by respondents were published after the POR, while the quote from the single India honey producer's CEO is merely an anecdotal remark lacking a quantitative context.

⁷ AR2 Preliminary Results, 69 FR at 77193.

The Department's *Preliminary Results* research⁸ shows prices that occur after the instant POR, according to petitioners, and the Department itself noted that the prices could not be relied upon because of a lack of information regarding the data collection methods. Finally, petitioners contend, the Argentinean company's price experiences cannot be extrapolated to an India producer's experience and should be disregarded. *See Petitioners' Rebuttal Brief at 17-22.*

The Money article, petitioners note, placed on the record by respondents refers to 50 Rs/kg for raw honey and 100 Rs/kg for retail honey. If it were true that raw honey is half the cost of retail honey, as suggested by this article petitioners argue, then the prices for retail honey mentioned in the Tribal article and Drought article suggest that raw honey prices would be 80 Rs/kg and 90 Rs/kg, respectively, meaning the EDA data are reflective of POR prices. Respondents reject *The Hindu* article placed on the record by petitioners, "Golden Jubilee of Honey Producers' Society on Monday," dated February 2005 (Golden article), petitioners claim, because they argue it is dated post-POR and reflects the prices of one cooperative. However, petitioners claim the article and its price of 80 Rs/kg paid to farmers are relevant because they refer to prices in 2004, which covers the majority of the POR, as evidenced by the reference to the Kodagu Progressive Honey Producer's Cooperative Society's production in 2004 of 92 MT, and references to its profitable 2003-2004 production year and golden jubilee celebration for 1954 to 2004. This price point, petitioners contend, further corroborates the EDA data. While GDLSK respondents claimed that the Golden article contained a minimal quantity of honey, petitioners state, the 92 MT discussed in this article cover a larger quantity than the 33 MT of honey in the combined Money and Sunderbans articles. *See Petitioners' Rebuttal Brief at 17-22.*

Finally, petitioners contend that, of all respondent-cited sources, only the Tribune article is relevant to this POR, and it only covers one month. If the Tribune data are to be used in this review, petitioners argue, other articles with POR price points should be used as well, such as the Golden article and information from MHPC financial statements, which show the cooperative paid an average price for raw honey of 88.3 Rs/kg for fiscal year 2003-2004 and 72.9 Rs/kg for fiscal year 2004-2005. Using these four data points, petitioners contend, the POR raw honey surrogate value would be 76.6 Rs/kg. *See Petitioners' Rebuttal Brief at 22-26.*

Department's Position:

We continue to find that the EDA data placed on the record by petitioners constitute the best available information with which to value raw honey for this POR. Accordingly, we find that an average of the prices contained in the EDA data, inflated to the current POR using WPI, is the most reflective of raw honey prices in India during the POR. We explain these findings below.

In valuing factors of production, section 773(c)(1) of the Tariff Act of 1930, as amended (the Act), instructs the Department to use "the best available information" from the appropriate market economy country. In choosing the most appropriate surrogate value, the Department considers several factors, including the quality, specificity, and contemporaneity of the source information. *See, e.g., Fresh Garlic from the People's Republic of China: Final Results of*

⁸ See "Memorandum to the File: Factors of Production Valuation Memorandum for the Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review of Honey from the People's Republic of China," dated December 9, 2005, at Attachment 18 (Preliminary Results FOP Memo).

Antidumping Duty New Shipper Review, 67 FR 72139 (December 4, 2002) (*Garlic NSR 2002*), and accompanying Issues and Decision Memorandum, at Comment 6. Stated differently, the Department attempts to find the most representative and least distortive market-based value in the surrogate country. *See Certain Preserved Mushrooms from China Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People’s Republic of China*, 66 FR 31204 (June 11, 2001) (*Mushrooms 2001*), and accompanying Issues and Decision Memorandum, at Comment 5. The Department undertakes this analysis on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry. As further noted in the *Garlic NSR 2002*, at Comment 6, the Department prefers, whenever possible, to use countrywide data, and only resorts to company-specific (or regional) information when countrywide data are not available. In addition, the Department prefers to rely on publicly available data. *See Freshwater Crawfish Tail Meat from the PRC: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, and Final Partial Rescission of Antidumping Duty Administrative Review*, 66 FR 20634 (April 24, 2001) (*Crawfish 2001*), and accompanying Issues and Decision Memorandum, at Comment 2.

In the *Preliminary Results*, in accordance with its established practice and consistent with previous segments of this honey proceeding,⁹ the Department determined that the EDA data constituted the best available information for purposes of valuing raw honey. In selecting the EDA data, the Department finds that these raw honey pricing data are the best information currently available because they are publicly available, quality data, and specific to the raw honey beekeeping industry in India. While not the most contemporaneous data to the POR, the Department has determined that the EDA data are the “best available information” for this POR because they are more detailed and more reliable than the alternate data submitted by petitioners and respondents. As the U.S. Court of International Trade (CIT) recently held in *Hebei Metals & Minerals Import & Export Corporation and Hebei Wuxin Metals & Minerals Trading Co., Ltd. v. United States*, 366 F.Supp.2d 1264, 1275 (CIT 2005) (*Hebei Metals*), “{t}hree months of contemporaneity is not a compelling factor where the alternative data is only a year-and-a-half distant from the POI.” In this case, the EDA data precedes the POR by only 12 months.

We note that the EDA data are from a published, publicly available source, the website, www.litchihoney.com. With respect to quality, we find that the EDA data source is highly documented, including numerous specific price points over a six-year period for multiple types of honey from many suppliers, and includes detailed information on production, inputs, and beekeepers. Regarding specificity, we note that the prices quoted in the EDA data are specific to the raw honey beekeeping industry in the state of Bihar in India, which the Department found to be a significant producer of honey in India. *See AR2 Final Results*, at Comment 1. Regarding reliability, the Department finds that the data collection methods for the EDA data are documented with respect to data sources, distribution, and collection practice.

With respect to respondents’ argument that the EDA data are not the best available information because they are not contemporaneous to the POR, we note that the Department’s decision as to which information constitutes the “best available information” is case specific and turns on the

⁹ *See AR2 Final Results* at Comment 1.

facts of each case.¹⁰ The Department may not always be able to find surrogate values that satisfy each of the preferences listed above. Nevertheless, it is the Department’s practice to choose among the available surrogate value options and select that option which is the best. *See Crawfish 2001*, at Comment 2. Respondents claim the inflated EDA data value is aberrational, while petitioners argue that the EDA data price is reasonable. The Department finds that it is faced in this review, as in previous reviews, with a set of information on the record that includes various price points within the POR, including honey values in news articles that range from 40 Rs/kg to 160 Rs/kg, and values from other sources that range from 74 Rs/kg to 83 Rs/kg.

Regarding the honey prices from the WTA export data and India Infodrive, we agree with petitioners that export data may not accurately reflect the market value of the goods within the country of exportation. The Department’s stated preference is not to use export data. *See Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 12651 (March 15, 2005), and accompanying Issues and Decision Memorandum, at Comment 4; *see also Sebacic Acid From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 69 FR 75303 (December 16, 2004), and accompanying Issues and Decision Memorandum, at Comment 4. Furthermore, the WTA data and Infodrive data rely on values “under HTS subheading 04900000,”¹¹ which is a basket category composed of both raw and processed honey shipments. The Department does not use data based on this subheading to value raw honey precisely because it is a basket category. The Department has also indicated in prior cases that it prefers not to use Infodrive data to derive surrogate values or to use as a benchmark to evaluate other potential surrogate values because it does not account for all of the imports that fall under a particular HTS subheading. *See Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People’s Republic of China*, 70 FR 24502 (May 10, 2005), and accompanying Issue and Decision Memorandum, at Comment 1.

In light of the various price points on the record, the Department cannot agree with respondents that record evidence makes it self-evident that the Indian honey market suffered a significant price decline during the POR. Rather, the Department finds that the record shows that the EDA data are the most reliable and that it is appropriate to inflate the EDA data to be contemporaneous to the current POR. Although respondents raised concerns about the representativeness of the EDA data, the Department finds that the prices quoted in the EDA data are clearly from the second-largest honey-producing region in India, and are therefore representative of raw honey prices in India.

The Department has evaluated the other potential sources for valuing raw honey placed on the record of this proceeding. None of these other potential sources is as reliable or appropriate for surrogate value purposes as the raw honey values appearing in the EDA data. In its Preliminary

¹⁰ Although we have determined, in prior segments of this proceeding, that prices in a single region of India are less representative than country-wide prices (*see Final Determination of Sales at Less Than Fair Value; Honey from the PRC*, 66 FR 50608 (October 4, 2001) (*Honey Final Determination*), and accompanying Issues and Decision Memorandum, at Comment 4), we note that the Department makes an independent determination of what constitutes the “best available information” during each segment of a proceeding based on the information available on the record.

¹¹ *See GDLSK Respondents’ Brief* at 10, where respondents stated they used this category to derive the quoted prices.

Results FOP Memo, the Department deemed the Money article not representative of prices in India, because the data reported by the article are from a single honey processing society, the Chandram Honey Producers Society. According to the article, the society sold 3,000 kg of honey in the previous year (2003). The same concerns hold for the Sunderbans article, which was placed on the record after the *Preliminary Results*. The Sunderbans article refers to prices in a single region of India, West Bengal, not alleged to be a major honey producing state. Furthermore, the target honey output for the 30 “self-help” groups mentioned in the article is 30,000 kg for the season. The Golden article refers to a greater output, about 92 MT, but the output is related to a single producer, as is the price mentioned in the article. The prices in those three articles do not appear to be representative of country-wide prices in India.

In fact, the majority of the news articles on the record of this review, including the Drought article and Highway article, are inferior to the EDA data because they represent the experience of single producers, specific cooperatives, or single, smaller-sized honey producing regions, and do not appear representative of countrywide prices in India. Consistent with the Department’s normal practice, “a single input price reported by a surrogate producer may be less representative of the cost of that input in the surrogate country.” *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27295, 27366 (May 19, 1997) (*Final Rule*). Rather, the Department prefers to use a publicly available price that reflects numerous transactions between many buyers and sellers, because the experience of a single producer is less representative of the cost of an input in the surrogate country. *Id.* This is also consistent with our approach in the less-than-fair-value investigation and prior administrative reviews, where we rejected raw honey data from an Indian honey-processing cooperative because we determined that such data represented the experience of a single processor of honey in a particular region of India. *See Honey Final Determination*, at Comment 4. *See also AR2 Final Results*, at Comment 1.

Several of the remaining news articles placed on the record are unreliable for other reasons. For example, the Department cannot confirm the veracity of the Unnamed article, which was published on a weblog (or blog) that seems to offer advice on how to start an import/export business and has had no activity since May 2005. The Deccan article discusses beekeeping in the context of “sustainable agribusiness ventures {which} can alleviate unemployment in rural India,”¹² and the prices discussed therein are theoretical beekeeping profits. The Department previously rejected the use of the Kerala article in the most recently completed review of this case. *See AR2 Final Results*, at Comment 1. In the instant proceeding, the Department continues to have concerns about the reliability of the data, which we find represent an extremely limited pool of data from which to value raw honey. Regarding the Tribal article, it is unclear if the price quoted in this article refers to raw honey prices. For all of these reasons, the Department finds these four news articles to be unreliable as sources for valuing raw honey.

As the Department stated in *AR2 Final Results*, at Comment 1, the Department does not find the Tribune article to be unusable as a source for valuing raw honey. Instead, we have determined that the EDA data are a more appropriate source. The Department has determined for these final results that the EDA data are the “best available information available” for this POR because they are more detailed and more reliable than the data in the Tribune article and the data in all

¹² *See* February 2, 2006, Second Surrogate Value Submission from GDLSK respondents to the Secretary of Commerce at Exhibit 4.

the other news articles placed on the record. As an initial matter, we note that the Tribune article may represent data from a state only slightly larger than that represented by the EDA data, and therefore the EDA data are as representative as the prices in the Tribune article. However, the Department also finds that the EDA data are more detailed in that they contain multiple price points over discrete periods of time for specific types of honey and contain exhaustive information on the source of these data. The Department determines for these final results that the EDA data are a more reliable source to value raw honey because the Department finds that the data collection methods for the EDA data are documented with respect to data sources, distribution, and collection practice.

Although respondents argue that the Department should accept the Money article, Tribune article, and Sunderbans article as being as probative with respect to the price of raw honey in India during the POR, the exceptionally limited nature of the Sunderbans and Money articles' data renders them unrepresentative of Indian prices as a whole in comparison with the broader EDA data. Therefore, consistent with *AR2 Final Results*, at Comment 1, and our normal practice, we continue to reject the raw honey data in these news articles because they are not representative of countrywide prices in India. Although we continue to find the Tribune article a reliable source for valuing raw honey, we find that the EDA data constitute a more appropriate surrogate value source for this POR.

Finally, with respect to Eswell's argument that the Department should discard litchi and karanj derived honey from the EDA data and use only the EDA data price point for tori honey, we agree with petitioners that there is not sufficient evidence on the record to show that the PRC respondents ship honey derived only from one flower type, nor is there record evidence that the PRC respondents only produce a less flavorful or lower-quality honey than the types of honey represented by the EDA data. In this proceeding, no respondent has reported more than one control number (CONNUM), which represents the product characteristics, for their production of honey.¹³ We also note that the article contained in Exhibit 1 of Eswell's February SV submission, which Eswell cites to as proof that rapeseed is the predominant type of honey that China cultivates, merely states that leading producers of rapeseed (the plant, not the honey produced thereof) includes China. Several paragraphs later the article states, without mentioning China, that "rapeseed is a heavy nectar producer . . ." Furthermore, we note that the scope of this order states that the following products imported into the United States are subject to this administrative review:

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

¹³ See Anhui Honghui Final Analysis Memorandum; Jiangsu Kanghong Final Analysis Memorandum; Jinfu Final Analysis Memorandum; Eswell Final Analysis Memorandum; and Zhejiang Final Analysis Memorandum, all dated June 9, 2006, which contain copies of respondents' FOP databases. Respondents report their CONNUMs based on three product characteristics, which include the type of honey, the percentage of natural honey in the product, the grade of honey, which refers to the honey's color, and the form of honey, liquid, comb, etc.

The scope of the order does not differentiate honey by flower types. Moreover, respondents have not differentiated their honey production by flower type, instead reporting a single factor of production (FOP) for all honey types sold. Therefore, for these final results, the Department will not differentiate raw honey values based on flower types, nor do we believe it is appropriate to do so.

In conclusion, the various price points on the record, with the exception of the EDA data, are generally of uncertain quality as to how the data were gathered, unclear in certain instances whether they referred to raw or processed honey,¹⁴ or the data are reflective of market values in countries other than India (such as the export data from India to other countries). Given the varying degrees of data reliability, the Department placed a primacy on specific-to-the-product information, reasonably close to the POR in time and with the most transparent and reliable data gathering and reporting methods. Therefore, we find that the EDA data are the best available information for valuing the factor of raw honey, and we have utilized a weight-averaged price, using the price and quantity for each type of honey contained in the EDA data and adjusting the value for inflation to make it contemporaneous with the instant POR, to value raw honey for these final results.¹⁵ The calculation results in a POR average raw honey value of Rs. 81.77 per kg.

Comment 2: Selection of Surrogate Financial Ratios

GDLSK respondents argue that the Department should use the values from the Apis (India) Natural Products (Apis) financial statements rather than the values from the Mahabaleshwar Honey Producers' Cooperative (MHPC) financial statements. GDLSK respondents maintain that the Department selected the MHPC data despite serious deficiencies in the data.

GDLSK respondents first argue that the Department made unsubstantiated assumptions regarding MHPC's accounting methodology, which distort the calculation of the financial ratios. GDLSK respondents state that MHPC financial statements are deficient, as they do not report the cost of raw materials—a necessary component to the calculation of sales, general, and administrative (SG&A) expenses. GDLSK respondents state that to calculate cost of manufacturing (COM), the Department made erroneous assumptions to derive the value of raw honey consumed. GDLSK respondents explain that because the MHPC statements do not disclose a “closing inventory” value, the Department assumed that MHPC had no ending inventory and employed a “last in, first out” (LIFO) accounting method to arrive at the cost of raw materials. GDLSK respondents argue that the Department should reject MHPC financial statements rather than make “unlawful speculations” about the company’s accounting methods. GDLSK respondents cite the *Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255, 72265

¹⁴ While it is not apparent if the highest of the honey prices in these news articles is for raw honey, rather than retail honey, the Department finds petitioners’ arguments reasonable that raw honey could be expected to be half the cost of retail honey, given the price information contained in the Money article. This would mean the presumable retail prices for honey mentioned in the Tribal article and Drought article suggest that raw honey prices would be 80 Rs/kg and 90 Rs/kg, respectively, making the EDA data reflective of POR prices. (The Money article states: “A one-kg bottle of processed honey is sold for Rs 100. Of late, Kamala says, there has been a growing demand for pure honey to be used in Ayurvedic medicines. This is sold for Rs 50 a kg. . . .”)

¹⁵ For a detailed discussion of the calculation of this surrogate value see Preliminary Results FOP Memo.

(December 31, 1998) (*Mushrooms* 1998), where the Department rejected the Saptarishi Agro (Saptarishi) financial statements due to inclusion of packing materials, which tainted the calculation of raw material costs. *See GDLSK Respondents' Brief at 23-24.*

GDLSK respondents also argue that the Department should reject the financial statements because of a lack of a useable profit ratio, alleging that the Department derived a profit ratio using unsubstantiated accounting assumptions that resulted in a distorted profit ratio calculation. *See GDLSK Respondents' Brief at 24-26.*

Moreover, GDLSK respondents argue that because MHPC is a cooperative, it is not representative of Indian free markets and thus should not be applied to Chinese companies. GDLSK respondents state that the Department prefers to use surrogate data from reliable sources¹⁶ and is required to “avoid surrogate values tainted by non-market forces.”¹⁷ They assert that the Department should reject the MHPC financial statements, as MHPC is a cooperative that does not represent true market operations and is distorted by non-market forces. GDLSK respondents explain that MHPC buys honey from its members at “higher” rates, and loans honey and equipment to its members, which are sometimes not repaid on time. Moreover, GDLSK respondents argue that according to 19 CFR 351.407(b), were MHPC the subject of an antidumping administrative review, absent evidence suggesting that the affiliated party sales were made at fair market value, the Department would reject MHPC’s purchase costs and has done so in previous reviews.¹⁸ *See GDLSK Respondents' Brief at 26-27.*

GDLSK respondents also argue that the MHPC financials are further distorted by costs incurred from MHPC’s fruit canning business, which they claim the Department has acknowledged in previous reviews.¹⁹ GDLSK respondents claim that the fruit canning business involves higher costs from machinery depreciation in the canning process, which affects all aspects of MHPC’s financials, consequently further skewing the Department’s calculation of factory overhead and SG&A. GDLSK respondents point out that in other cases, the Department has rejected surrogate financials that have included significant amounts of non-subject merchandise²⁰ in the calculation of raw materials costs and should do so again in the current administrative review. *See GDLSK Respondents' Brief at 27-29.*

GDLSK respondents argue that Apis, unlike MHPC, is free of the aforementioned distortions, comports with Indian Generally Accepted Accounting Principles (GAAP), and reflects a true market economy honey producer and exporter that better represents Chinese honey producers. GDLSK respondents argue that the Department’s previous decision not to use the Apis financial statements due to the lack of auditor’s notes is without merit. They argue that the Apis financial statements are in accordance with Indian GAAP and that the Apis financials were fully audited, as is evident by the auditor’s stamp and dated signature on each page. Furthermore, GDLSK

¹⁶ Citing *Notice of Final Results of Antidumping Administrative Review: Persulfates from the People's of China*, 66 FR 42628 (August 14, 2001), and accompanying Issues and Decision Memorandum, at Comment 5.

¹⁷ Citing *Nation Ford Chem. Co. v. United States*, 21 CIT 1371, 1374 (1997).

¹⁸ Citing *Notice of Final Results of Antidumping Duty New Shipper Review: Honey From the People's Republic of China*, 68 FR 62053 (October 31, 2003) (*Wuhan Bee NSR Final*), and accompanying Issues and Decision Memorandum, at Comment 3; and *ARI Final Results*, at Comment 3.

¹⁹ Citing *Wuhan Bee NSR Final*, at Comment 3.

²⁰ Citing *Mushrooms* 1998, 63 FR at 72265.

respondents argue that rejecting the financial statements due to the lack of notes is inconsistent with the Department’s previous practices, as the Department has previously relied upon financial statements that also did not contain auditor’s notes.²¹ Furthermore, GDLSK respondents reject the Department’s determination that the Apis statements’ schedules were incomplete, citing GDLSK respondents’ surrogate values submission at exhibit 15 (October 11, 2005). GDLSK respondents conclude that the Department should use the Apis financials *in lieu* of the MHPC financials, as Apis’s financial statements are complete, comparatively more representative of Chinese business experiences, and are consistent with the Department’s practice. *See* GDLSK Respondents’ Brief at 29.

Both GDLSK respondents and Eswell argue that the MHPC statements do not comport with Indian GAAP.²² Eswell asserts that in previous cases, the Department has required financial statements to be in accordance with the surrogate country’s GAAP. However, Eswell argues that the MHPC financial statements do not satisfy the specificity required by the Indian GAAP.²³ Eswell argues that the MHPC financials failed to specify various values, including quantities consumed in the actual production of the subject merchandise, the opening and closing inventory, a break-down of raw materials, the work-in-progress volume, a finished goods inventory, and the actual quantity produced, as specified by the Indian GAAP. Furthermore, Eswell argues that many of these items are necessary for the Department to accurately calculate the COM, the cost of production (COP), the cost of goods sold (COGS), and the financial ratios. *See* GDLSK Respondents’ Brief at 29; *see also* Eswell Brief at 15-21.

Eswell argues that in rejecting Apis’ financial statements, the Department’s approach is contradictory to precedent and practice, as—in the current review—the Department has rejected surrogate honey prices from cooperatives, but used surrogate financial statement from a cooperative. Eswell argues that the lack of details in the MHPC financial data renders impossible the attempt to calculate accurate financial ratios, and thus the Department should use the Apis financial statements, as it is the “best available information” in the current review. *See* Eswell Brief at 15-21.

Petitioners argue that the Department should continue to use MHPC’s public financial statements pertaining to honey processing instead of the private Apis financial statements. Furthermore, petitioners assert that the Department had addressed most of the respondents’ arguments in the *AR2 Final Results*, at Comment 2, and therefore should continue to calculate the financial statements as consistent with the *Preliminary Results*. *See* Petitioners’ Rebuttal Brief at 26.

With respect to respondents’ arguments regarding the use of a LIFO inventory methodology, petitioners state that the Department already rejected respondent’s argument on this point in *AR2 Final Results*, at Comment 2. Petitioners argue that the Department should take the same position in this review. *See* Petitioners’ Rebuttal Brief at 27.

²¹ Citing *Notice of Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture from the People’s Republic of China*, 69 FR 67313 (November 17, 2004) (*Bedroom Furniture*), and accompanying Issues and Decision Memorandum, at Comment 3.

²² Citing Eswell Brief.

²³ Citing February SV submission—Indian GAAP and U.S. GAAP: A Comparison, Differences in the U.S. GAAP and Indian GAAP, Point 21, Schedule VI to the Companies Act, 1956.

Petitioners reject respondents' claim that the Department's decisions in the final results of the *Mushrooms* 1998 undermine the use of the MHPC data. They claim that there are significantly dissimilar circumstances between *Mushrooms* 1998 and the current review. Petitioners maintain that in *Mushrooms* 1998, the Department had three public financial statements, whereas in this review, the Department has only one. Furthermore, petitioners claim that the Department rejected Saptarishi's financial statements because it included a significant amount of packing materials in the raw material costs, as the Department stated in a prior segment of this proceeding. *See AR2 Final Results*, at Comment 2. Thus, petitioners argue that the Department's decision in *Mushrooms* 1998 is not applicable to the current review. *See* Petitioners' Rebuttal Brief at 28.

Petitioners argue that with respect to respondents' issue regarding MHPC's cooperative structure, the Department's decision from the *AR2 Final Results*, at Comment 2, should be retained. Petitioners reject respondents' assertion that MHPC's practice of providing loans to members that were untimely repaid and its purchases of raw honey at "artificially inflated prices" demonstrate MHPC's distortive and non-market oriented business practices. Petitioners argue that if the line item for "bad debts" is missing from MHPC's financial statements, SG&A expenses are actually understated, and thus the Department's current calculation is already a conservative measure of operating costs. Petitioners also claim that GDLSK respondents' assertion that raw honey prices are "artificially inflated" is inconsistent with respondents' request to amend the Department's accounting methodology. Petitioners state that, while respondents' claim that the MHPC raw honey prices are "artificially inflated," respondents concurrently argue that raw honey prices are dramatically understated by the Department's LIFO accounting method. *See* Petitioners' Rebuttal Brief at 28-29.

Petitioners also reject respondents' assertion that MHPC's fruit canning business distorts MHPC's financial statements and cite *AR2 Final Results*, at Comment 3, where the Department previously addressed respondents' argument. Petitioners further argue that the total value of non-subject merchandise included in the financial statements fell from 16.71 percent in the 2003/2004 statements to 14.5 percent in the 2004/2005 statements.²⁴ *See* Petitioners' Rebuttal Brief at 29-30.

Petitioners argue that the MHPC financial statements are more probative than the less contemporaneous Apis financial statements. Petitioners claim that respondents' assertion that the Apis financial statements reflect "only the financial performance of its honey operations" is based on an unofficial letter²⁵ and cannot be confirmed by the Apis report itself, nor its website. Furthermore, petitioners argue that the lack of financial statement sub-schedules, itemized lists, auditor's report, chairman/president's report, or other details do not permit the Department to determine the amount of non-subject merchandise included in Apis' production. Petitioners also assert that the Apis report is missing page numbers so that the general scope of the omissions cannot be ascertained. Petitioners argue that in seeking to replace the MHPC financial

²⁴ Petitioners refer to the Department's decision in the *Mushrooms*, where the Department rejected the Saptarishi financial statements due to the significant quantity of non-subject merchandise in the financial statements.

²⁵ GDLSK respondents' October 11, 2005, surrogate values submission at Exhibit 15.

statements, the onus is on respondents to demonstrate Apis' superiority, which, petitioners contend, they have failed to do. *See Petitioners' Rebuttal Brief at 30-32.*

Petitioners also reject respondents' assertion that Apis' role as an exporter of honey makes it a more appropriate surrogate company. Petitioners argue that the Department's calculation of normal value is first based on a party's home-market sales, representing the company's domestic production, and that export sales would only be considered if domestic sales were not viable. *See Petitioners' Rebuttal Brief at 32.*

Department's Position:

Pursuant to section 773(c)(1) of the Act, it is the Department's practice to use the best available information for valuing the financial ratios. In valuing factors of production, section 773(c)(1) of the Act instructs the Department to use "the best available information" from the appropriate market economy country. In evaluating the veracity and suitability of surrogate financial statements, the Department attempts to find the most representative and least distortive market-based value in the surrogate country, and considers several factors, including the quality, specificity, and contemporaneity of the source information. *See, e.g., Garlic NSR 2002*, at Comment 6. For the reasons discussed below, the Department finds the 2004/2005 MHPC financial statements to be the best and most contemporaneous available information²⁶ for valuing the financial ratios.

In the *Preliminary Results*, the Department relied on the 2003/2004 MHPC financial statements. On February 2, 2006, petitioners placed the 2004/2005 MHPC data on the record of this review.

As an initial matter, the Department continues to find that the Apis financial statements are not as reliable a source for calculating the surrogate financial ratios as MHPC. The Department finds that the Apis financial statements do not include standard sections such as a chairman/president's report and auditor's notes. Furthermore, because the Apis financial statements do not include page numbers, the Department cannot ascertain whether the Apis statements contain a complete record of sub-schedules. Respondents have provided no further evidence to demonstrate that the Apis statements are, in fact, complete. While the missing sections themselves do not discredit the probity of the Apis financial statements, in their totality, the Department finds that the lack of details commonly found in corporate financial statements renders the Apis financial statements comparably less reliable than MHPC's financial statements, which include such information. While the MHPC financial statements specifically report itemized costs associated with honey production and sales, and specifically segregate honey production and sales from MHPC's other business functions, the lack of detail in the Apis financial statements leaves the Department unable to ascertain the extent of the company's honey and non-honey business functions.

The Department disagrees with GDLSK respondents' assertion that the MHPC data are deficient and that the Department made erroneous assumptions regarding MHPC's accounting practices. The Department finds that the MHPC financial statements provide adequate information to

²⁶ The 2004/2005 MHPC financial statements cover eight months of the POR and are more contemporaneous than Apis.

approximate the cost of goods sold, based on the reported amounts of “honey collected” and “honey sold.”²⁷ Contrary to respondents’ assertions, the necessity of making certain assumptions in ascertaining the cost of raw honey consumed and the subsequent profit calculation do not make the data unusable. Consistent with section 773(f)(1)(A) of the Act, the Department may allocate costs and make adjustments where the reported costs do not reasonably reflect the costs associated with the subject merchandise. Thus, the Department finds that the current calculation methodology provides for a reasonable derivation of the cost of goods sold and profit ratio.

The Department disagrees with the respondents’ assertion that MHPC does not represent a free-market entity. Consistent with determinations in previous segments of this proceeding, the Department finds that tardy loan repayments from members and higher prices paid to affiliated producers are not unusual business practices, and do not discredit MHPC as a free-market entity. *See AR2 Final Results*, at Comment 2. Because MHPC buys raw honey from its affiliated producers and sells processed honey to its customers, the Department finds that MHPC’s financial statements are reflective of the experience of Indian honey producers.

The Department also disagrees with the respondents’ contention that the Department should reject the MHPC financial statements because they do not comport with Indian GAAP. In previous reviews, the Department has rejected financial statements that were not in accordance with the surrogate country’s GAAP; however, in such reviews, the Department’s decision was based on auditor’s notes included in the financial statements, which stated that the company’s reporting methodology was inconsistent with GAAP.²⁸ In the instant review, MHPC auditor’s notes provide no such indication, and furthermore, the Apis financial statements lack auditor’s notes. Thus, the Department finds that the respondents’ claim that the Apis financial statements comport with Indian GAAP, while MHPC’s does not, is based on the respondents’ assessment rather than an auditor’s official certification and we therefore accord it little weight, especially given the Court’s acceptance of the Department’s reliance on MHPC in prior reviews. *See Wuhan Bee Healthy Co., Ltd. v. United States*, 374 F. Supp. 2d 1299, 1309 (CIT 2005). Additionally, while the Department does consider whether the surrogate financial statements conform to the GAAP of the surrogate country, the Department also carefully considers all of the available evidence in light of the particular facts of each industry and undertakes the analysis on a case-by-case basis.

The Department also disagrees with respondents’ assertion that MHPC’s fruit canning business distorts the probity of the calculated financial ratios. Consistent with the decision in the *AR2 Final Results*, at Comment 2, the Department finds that the asset value of non-subject operations accounts for only a minor portion of MHPC’s total asset value.

²⁷ 2004/2005 MHPC financial statements, at 7.

²⁸ See *Tapered Roller Bearings and Parts thereof, Finished and Unfinished from the People’s Republic of China; Final Results of 1997 - 1998 Antidumping Duty Administrative Review and New Shipper Review*, 64 FR 61837 (November 15, 1999) (*Tapered Roller Bearings 1999*), and accompanying Issues and Decision Memorandum, at Comment 8.

Comment 3: Calculation of the MHPC Financial Ratios

GDLSK respondents argue that, should the Department continue to use the MHPC financial statements, the Department should make certain amendments to its calculation of the financial ratios.

First, GDLSK respondents argue that the Department should employ the “first in, first out” (FIFO) accounting method to derive raw honey costs. GDLSK respondents assert that the Department’s application of LIFO for the preliminary results is illogical as honey is a perishable product. In applying the FIFO accounting methodology to the MHPC financial statements, GDLSK respondents argue that the Department should only apply the purchase price of the “collected honey” and add that amount to the reported “opening stock” from the Main Business Journal. *See GDLSK Respondents’ Brief at 32.*

GDLSK respondents also argue that the Department should exclude “Honey Sales Commissions” from the MHPC calculation of surrogate financial ratios to avoid double counting. GDLSK respondents point out that the Department makes various adjustments to the calculation of U.S. net price, including deducting sales commissions, and subsequently compares U.S. net price to normal value (NV) to calculate the margin. GDLSK respondents note that in NME cases the calculation of NV incorporates costs borne by the surrogate financial ratios. Thus, GDLSK respondents claim that, since “Honey Sales Commissions” are reported in the MHPC financials, the comparison constitutes double counting. GDLSK respondents assert that the Department and the CIT have both recognized the importance of avoiding double counting to ensure a reasonable “apples to apples” comparison,²⁹ and have recognized the need to make similar deductions from surrogate financial ratios in previous reviews.³⁰ GDLSK respondents contend that the “Honey Sales Commission” reported in the MHPC financial statements directly correspond to the commissions deducted in the Department’s U.S. price calculation. Furthermore, GDLSK respondents argue that rather than tailoring the financials to specific producer experiences, the Department should generally exclude commissions from the MHPC financial ratios calculation. *See GDLSK Respondents’ Brief at 34.*

GDLSK respondents also argue that the Department should include the cost of jars and corks in the denominator of the profit ratio. GDLSK respondents assert that the Department had no record evidence to support the deduction of jars and corks from the financial ratios calculation, and further argue that it is “reasonable” to assume that MHPC consumes jars and corks in selling honey, as the costs were included as expenses along side other honey related production and sales items. GDLSK respondents further argue that the denominator should include all expenses

²⁹ Citing Chapter 8 of the Department’s Antidumping Manual; *Hebei Metals & Minerals Imp. & Exp. Co. v. United States*, 2004 Ct. Intl. Trade LEXIS 89, Slip Op. 04-88 (2004); *Notice of Final Results of 1996-1997 Antidumping Duty Administrative Review and New Shipper Review: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from the People’s Republic of China*, 63 FR 63842 (November 17, 1998) (*Tapered Roller Bearings 1998*), and accompanying Issues and Decision Memorandum, at Comment 18, and *Holmes Products Co. v. United States*, 16 CIT 628 (1992).

³⁰ Citing *Honey Final Determination*, at Comment 3, and *Tapered Roller Bearings 1998*, at Comment 18.

of direct material costs.³¹ Moreover, GDLSK respondents claim that since it is “reasonable” to assume that MHPC consumes the jars and corks in the sales of honey, the revenues of the sales of jars and corks should also be deducted from the honey revenues calculation.³² See GDLSK Respondents’ Brief at 37-39.

Eswell argues that the Department’s determination to assume that all of the honey was processed and sold during the MHPC fiscal year was unfounded, as the MHPC’s financial statements provide no corroborating information. See Eswell Brief at 19-20.

Petitioners reject respondents’ claims that the Department erred in its calculations of the surrogate financials ratios. Petitioners note that the Department has previously rejected each of respondents’ points in its prior final results. Regarding the calculation of the material costs, petitioners assert that respondents inconsistently argue that the Department should use FIFO to inflate the cost of raw honey, while simultaneously arguing for a smaller surrogate value for raw honey. Petitioners argue that respondents’ arguments are not objective, but rather results driven. They note that the Department rejected this claim in the previous administrative review. See Petitioners’ Rebuttal Brief at 26-29.

Petitioners claim that the Department should continue using its current methodology, update the financial ratios calculation using MHPC’s 2004/2005 financial statements, and incorporate the Department’s proposal to remove material-labor-energy (MLE). See Petitioners’ Rebuttal Brief at 34.

Petitioners also reject respondents “double-counting” claim regarding the Department inclusion of commissions in the calculation of SG&A. Petitioners argue that unlike movement expenses, commissions are not simply and universally deducted, but are rather circumstance-of-sale adjustments, which the Department does not make in NME proceedings, citing *AR2 Final Results*, at Comment 3. See Petitioners’ Rebuttal Brief at 35-36.

Finally, petitioners argue that the Department has correctly excluded jars and corks in the calculation of MHPC material expenses. Petitioners reject respondents’ claim that jars and corks are incorporated into the sale of the subject merchandise, and argue that they have offered no evidence to support their assertion. See Petitioners’ Rebuttal Brief at 36-37.

Department’s Position:

First, we disagree with respondents’ contention that the Department should use the FIFO methodology to calculate the cost of goods sold on the basis that honey is a perishable product. Respondents have provided no evidence to support their claim that honey is perishable; thus, the Department finds no reason to alter its inventory valuation methodology, which was applied in the *Preliminary Results* and previous segments of this order. Thus, consistent with the *Preliminary Results* and the *AR2 Final Results*, at Comment 2, the Department finds that the

³¹ Citing *Notice of Final Results of Antidumping Duty Administrative Review: Persulfates from the People’s Republic of China*, 68 FR 6712 (February 10, 2003), and accompanying Issues and Decision Memorandum, at Comment 9.

³² Citing *Shandong Huarong Gen. Corp. v. United States*, 25 CIT 834, 838 (2001) (*Shandong Huarong*).

methodology used in the *Preliminary Results* to calculate the cost of goods sold is reasonable, and will continue to use this methodology for the final results.

The Department also disagrees with respondents' argument that the Department should exclude honey sales commissions from the calculation of the surrogate financial ratios in order to avoid double counting. Consistent with the Department's findings in the *AR2 Final Results*, at Comment 3, *NSR4 Final Results*, at Comment 3, and the *Tapered Roller Bearings 1998*, at Comment 1, the Department has determined that because sales commissions represent standard selling expenses, these commissions should be included in the surrogate SG&A calculation. Furthermore, whether a PRC producer incurred sales commissions is irrelevant to the Department's surrogate SG&A calculation, as the Department does not modify surrogate financial ratios to match the particular circumstances of the NME country.³³

Finally, the Department disagrees with respondents' assertion that the Department should include the "jars and corks" expenses in the calculation of the surrogate financial ratios, premised upon the assumption that the "jars and corks" were consumed in the sale of honey. Respondents failed to provide evidence that the "jars and corks" were consumed as packing in the manner described. The Department notes that the costs and revenues associated with "jars and corks" are independently itemized on the MHPC financial statements—specifically apart from the lines items labeled "honey sales" and "packaging." Without supporting evidence to suggest that the items are associated with or incorporated into the sale of subject merchandise, the Department must treat the financial statement line items as they have been reported in the MHPC financial statement—*independent* of sales and packaging. Thus, consistent with previous segments of this order, the Department will continue to deduct only those packing expenses identified in the line item "packing" in the MHPC annual report, and will not adjust the surrogate financial statements to include the expenses for "jars and corks."

Comment 4: Calculation of Foreign Brokerage and Handling

GDLSK respondents argue that the Department should value brokerage and handling using the value from only Essar Steel (Essar) (submitted in the antidumping administrative review of hot-rolled steel flat products from India), and should not rely upon data from Pidilite Industry (Pidilite) (submitted in the antidumping investigation of carbazole violet pigment 23 from India). GDLSK respondents contend that the Essar's data are contemporaneous with the POR in this case and the Pidilite submission is outside of the POR. GDLSK respondents state that the Department's policy is, when all other things are equal, to limit the surrogate value to data that are contemporaneous with the period.³⁴ Finally, GDLSK respondents argue that the Department should follow its precedent of using contemporaneous data and disregard the non-contemporaneous data from Pidilite. *See GDLSK Respondents' Brief at 45-46.*

³³ See, e.g., *Tapered Roller Bearings 1998*, at Comment 1; *Honey from the People's Republic of China: Notice of Final Results and Final Rescission, In Part, of Antidumping Duty New Shipper Review*, 69 FR 64029 (November 3, 2004), and accompanying Issues and Decision Memorandum, at Comment 5; and *NSR4 Final Results*, at Comment 3.

³⁴ See *Anshan Iron & SteelCo. v. United States (Anshan Iron)*, 27 CIT __, Slip Op. 2003-83 at 33 (July 16, 2003); see also *Shandong Huarong*, 25 CIT at 849.

GDLSK respondents also argue that in addition to being non-contemporaneous, the Pidilite brokerage value is aberrational. According to GDLSK respondents, the Pidilite brokerage charge is over 38 times higher than the Essar brokerage charge. They note that the Essar value is based on over 307 times more cargo than the Pidilite brokerage charge. GDLSK respondents argue the high fees for a much smaller volume of Pidilite merchandise result in an unrepresentative and aberrational brokerage value, which the Department should disregard.³⁵ See GDLSK Respondents' Brief at 46.

Finally, GDLSK respondents argue that even if the Pidilite brokerage charge was not aberrational and did not need to be disregarded, the Department should calculate a true weighted average surrogate brokerage cost and not give an unrepresentative and distorted emphasis to the Pidilite value. GDLSK respondents contend that by calculating a weighted-average value for Pidilite and Essar separately and then combining the two results in a simple average, the Pidilite data were given unreasonable weight. GDLSK respondents argue that if Pidilite data are used in the final results, they should be combined with the Essar and Agro Dutch brokerage data to derive a true weighted-average brokerage charge by combining all brokerage charges from all three sources and dividing this amount by the total weight of shipments from all three sources. See GDLSK Respondents' Brief at 46.

Petitioners argue that both the Essar and Pidilite data are contemporaneous and reflect the full range of possible brokerage expenses. Petitioners contend that the Pidilite data represent commercial activities ending merely two months prior to the current POR, thereby requiring only a minor inflation adjustment to be brought into the POR. Petitioners argue that using both Pidilite and Essar data together provide a representation on both ends of the spectrum of economies of scale, and their average value represents the full scope of the Department's recent public data regarding Indian brokerage and handling expenses. Finally, petitioners assert that the use of the Essar/Pidilite data are consistent with Department precedent and have now been used in several final determinations or results.³⁶ See Petitioners' Rebuttal Brief at 40-42.

Department's Position

We agree with petitioners, and for the final results the Department will continue to value brokerage and handling using a simple average of the Essar and Pidilite data. In valuing factors of production, section 773(c)(1) of the Act instructs the Department to use "the best available information" from the appropriate market economy country. In choosing the most appropriate surrogate value, the Department considers several factors, including the quality, specificity, and

³⁵ Citing *Freshwater Crawfish Tail Meat From China: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 58672, 58678 (October 7, 2005).

³⁶ Citing *Postponement of Final Determination, and Preliminary Partial Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 70 FR 77121, 77133 (December 29, 2005), as affirmed in *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303 (May 22, 2006). See also *Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China*, 71 FR 16116 (March 30, 2006), and accompanying Issues and Decision Memorandum, at Comment 2.

contemporaneity of the source information.³⁷ Stated differently, the Department attempts to find the most representative and least distortive market-based value in the surrogate country.³⁸ The Department undertakes this analysis on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry. The Department prefers to rely on publicly available data.³⁹

The Department's preference would be to use an Indian brokerage and handling value specific to honey. Secondly, our preference would be to use publicly available data that are not ranged. However, in this case, we only have an Indian brokerage and handling value specific to other products, and the only information that is available publicly has been ranged. Therefore, as there are no honey-specific brokerage and handling values on the record, the Department finds that using a simple average of Essar and Pidilite's values achieves the most representative value.

The Department agrees with GDLSK respondents' statement that Essar's brokerage and handling value is the most contemporaneous value on the record in the instant review because it overlaps with the POR. However, as noted in the *Garlic NSR 2002*, at Comment 6, the Department must also consider the quality and specificity of the source information when selecting surrogate values. The Department finds that when considering the quality and specificity of the data on the record, *e.g.*, Essar and Pidilite's brokerage and handling values, calculating an average of the two values results in the most appropriate value on the record in this case.⁴⁰

GDLSK respondents argue for the use of Essar's brokerage and handling value over Pidilite's value because the Essar value is more contemporaneous. However, the Department notes that, as recently articulated by the CIT, data that are two months prior to the period, as is the case with the Pidilite value from the period October 1, 2002, through September 30, 2003, is not distant enough from the POR in this case (December 1, 2003, through November 30, 2004) for it to be disqualified for use.⁴¹ Therefore, in accordance with *Hebei Metals*, the Department finds that Pidilite's data are sufficiently contemporaneous and should not be excluded from consideration on that basis.

We also disagree with GDLSK respondents' argument that we should exclude brokerage and handling costs incurred by Pidilite because it is based on a smaller shipment of the merchandise, and the resulting value is higher than the Essar value. GDLSK respondents provided no supporting documentation to support their claim that Pidilite's brokerage and handling charges were aberrational (*e.g.*, not the norm for the industry) and the Department has stated previously that it cannot conclusively determine that a value is aberrational even when there are extreme differences in quantity and value.⁴² Additionally, the Department notes that the values reported

³⁷ See, *e.g.*, *Glycine from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 70 FR 47176 (August 12, 2005) (*Glycine*), and accompanying Issues and Decision Memorandum, at Comment 1; see also *Garlic NSR 2002*, at Comment 6.

³⁸ See *Mushrooms 2001*, at Comment 5.

³⁹ See *Crawfish 2001*, at Comment 2.

⁴⁰ We note that although respondents reference the use of a brokerage and handling value from Agro Dutch, this information is not on the record of this proceeding and therefore, we will not consider its use for the final results.

⁴¹ See *Hebei Metals* 366 F. Supp. 2d at 1275 (“{t}hree months of contemporaneity is not a compelling factor where the alternative data is only a year-and-a-half distant from the POI”).

⁴² See *Glycine*, at Comment 1.

by Essar and Pidilite are the actual prices paid by market economy companies and are representative of their normal business practices.

The Department also disagrees with GSLSK respondents' argument that the Department should weight average its calculation of brokerage and handling. As an initial matter, the Department finds that applying a simple average to the brokerage and handling values results in the most appropriate average value because it is the Department's practice to apply equal weight when calculating surrogate values for movement expenses using multiple products and experiences.⁴³ If the Department instead weight averaged the Essar and Pidilite values, which are for different products and different experiences, we would imply that the experience of the Indian producer that shipped the heaviest or the most merchandise is more representative of the PRC producers' experience in this review than the Indian producer that shipped the lightest or least merchandise.⁴⁴ In cases such as in this review, where we have multiple companies of varying sizes and experiences, no single experience is more representative of the actual brokerage and handling experience of all the companies subject to review. Additionally, weight is not the only factor that is considered in the determination of a brokerage and handling rate. Therefore, it is incorrect to assume that by weight averaging brokerage and handling charges incurred for shipments of different merchandise, we would be calculating a brokerage and handling expense that is more reflective of the expenses for the subject merchandise.

Furthermore, we note that in calculating weighted-average surrogate values for certain inputs and packing materials, we used publicly available import prices from Indian import statistics from the World Trade Atlas for the POR. Unlike the case with the Essar and Pidilite surrogate values, where weight averaging two company-specific values implies that the experience of a producer of one product is more representative of PRC honey producers than the producer of another product, weight averaging the valuation of the input and packing materials using Indian import statistics yields a more representative value because these values are from the same HTS category representing the best available information on the value of the FOP used by the respondent.

Therefore, in accordance with Department practice and section 773(c)(1) of the Act, the Department will value brokerage and handling charges based on a simple average of the Essar and Pidilite values it used in the *Preliminary Results*.

Comment 5: Calculation of the Surrogate Wage Rate

GDLSK respondents contend that the Department's policy of calculating a surrogate value for labor using data from numerous countries runs contrary to NME methodology⁴⁵ and that the Department should use the country-wide rate for India to value labor, rather than its current

⁴³ See, e.g., *Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Reviews*, 71 FR 26329 (May 4, 2006) (*Garlic 2006 Final Results*), and accompanying Issues and Decision Memorandum, at Comment 6.

⁴⁴ See *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026, 19039 (April 30, 1996) (*Bicycles*) (In *Bicycles*, we found that, for the purposes of equally capturing the experiences of large and small producers, there was no basis to conclude that a weighted average of the surrogate financial ratios was more accurate than a simple average.)

⁴⁵ Citing 19 U.S.C. § 1677b(c)(4).

practice of using regression analysis based on multiple countries. GDLSK respondents state that data for India should be used, based on section 773(c)(4) of the Act, because India is “economically comparable,” and is a significant producer of comparable merchandise.⁴⁶ GDLSK respondents note that the calculated wage rate of \$0.97/hour is more than 400 percent higher than India’s published, country-wide labor rate of \$0.23/hour. *See GDLSK Respondents’ Brief at 40.*

GDLSK respondents assert that the Department’s justification for using a regression analysis is incorrect. GDLSK respondents claim that the Department excluded many low-wage countries from its regression analysis, and included non-comparable source countries. Thereby, GDLSK respondents argue that the Department violated the statute’s instructions that surrogate values be derived from both economically comparable countries and countries that are significant producers of comparable merchandise.⁴⁷ GDLSK respondents contend that the Department’s position that a regression analysis is more accurate does not justify disregarding the statute.⁴⁸ In addition, GDLSK respondents claim that a complicated regression analysis may result in clerical errors, and is therefore less predictable than a regularly published country-wide labor rate from the primary surrogate country. Finally, GDLSK respondents argue that the Department’s use of China’s per-capita Gross National Income (GNI) in its regression analysis is contradictory to the Department’s NME methodology, because the NME methodology is based upon the theory that prices and other economic data from China are not market driven, and are therefore unusable and unreliable.⁴⁹ As a consequence, GDLSK respondents argue that the GNI data from China, which is an integral part of the regression calculation, should also be viewed as unreliable. *See GDLSK Respondents’ Brief at 41-42.*

GDLSK respondents state that the Department’s calculation is further flawed because it arbitrarily excludes relevant available data. GDLSK respondents note that data for an additional 14 countries was available from the sources used by the Department, and claim that excluding data from these countries from the wage calculation is contradictory to the Department’s position that “more data is better than less data.”⁵⁰ GDLSK respondents argue that the Department had no basis for excluding available country data, and that 19 USC 1516a(b)(1)(A) does not permit the Department to act in an arbitrary manner. Furthermore, GDLSK respondents contend that the omission of the 14 countries from the regression analysis leads to a biased and distorted result.⁵¹ *See GDLSK Respondents’ Brief at 43-44.*

In conclusion, GDLSK respondents argue that, if the Department continues to use a regression-based labor calculation, it should include all market economy countries for which, (1) per-capita GNI data are available from the *World Development Indicators*, and (2) wage data are available from the International Labour Organization (ILO) for any year between 1998 and 2003. *See GDLSK Respondents’ Brief at 45.*

⁴⁶ *See Preliminary Results*, 70 FR at 74772.

⁴⁷ Citing 19 U.S.C. 1677b(c)(4)(A) and (B).

⁴⁸ Citing *Chevron USA, Inc. v. Natural Resources Defense Council*, 467 U.S. 837, 842-43, reh’g denied 468 U.S. 1227 (1984), stating that a regulation cannot stand if it is “arbitrary, capricious, or manifestly contrary to the statute.”

⁴⁹ *See Preliminary Results*, 70 FR at 74772.

⁵⁰ Citing *Final Rule*, 62 FR at 27367.

⁵¹ *See Elements of Econometrics* by Jan Kmenta, at 341-344 (1971) in respondents’ Second Surrogate Value Submission at Exhibit 5, Attachment 3.

Eswell argues that the exclusion of any country for which ILO data are available is arbitrary and is inconsistent with the underlying intent of the Department’s use of a regression-based wage rate methodology that “more data is better than less data.” Eswell asserts that the Department should correct this error in the final results. *See* Eswell Brief at 22.

In their rebuttal brief, petitioners argue that the Department should continue to use the wage rate calculation used in the *Preliminary Results*. Petitioners note that GDLSK respondents have presented the same arguments in the prior segment of this proceeding and the Department continued to use the regression-based wage rate.⁵² Petitioners also argue that Department should not modify its policy, because the wage rate was calculated in accordance with 19 CFR 351.408(c)(3), and the Department is not required to choose a single rate from single countries pursuant to section 773(c)(4) of the Act. Petitioners contend that the Department should reject respondents’ requests for an expansion of the regression analysis sample population. Petitioners further note that the GDLSK respondents have presented the same argument in the prior segment of this proceeding and the Department continued to use the same sample population.⁵³ *See* Petitioners’ Rebuttal Brief at 37-40.

Department’s Position:

The Department’s 1996 proposed and 1997 final regulations both state that the agency will use regression-based wage rates reflective of the observed relationship between wages and national income in market economy countries. *See Antidumping Duties; Countervailing Duties Part II*, 61 FR 7308, 7384 (February 27, 1996) (*Proposed Rule*); *see also Final Rule*, 62 FR at 27367. In substance and in practice, the Department’s final regulation and regression methodology reflect the observed global relationship between wages and national income in market economy countries. Due to the variability of wage rates in countries with similar per capita GNI, were the agency to select a single surrogate country, or even a small group of surrogate countries, to value labor wage rates, the result would vary widely depending upon the economically comparable countries selected. *See Proposed Rule*, 61 FR at 7345. Thus, the regulations, as implemented, provide for a more accurate and more predictable result by utilizing data from multiple countries. *See Proposed Rule*, 61 FR at 7345; *Final Rule*, 62 FR at 27367.

When formulating its regulation, the Department determined not to rely on the sole wage rate from the selected surrogate country because while per capita GNI rates and wages are positively correlated, there is great variation in the wage rates of the market economy countries the Department typically treats as being economically comparable. *See Proposed Rule*, 61 FR at 7345. Labor, as a factor, is available in every country. However, many factors can greatly influence its average wage rate, including, but not limited to, that country’s government’s immigration, social welfare benefit, and general wage support programs. Thus, two neighboring countries, with similar economies, can have very different average wage rates. For example, the Department considers both India and Egypt to be economically comparable to the PRC; however, India has a wage rate of \$0.23 and Egypt has a wage rate of \$0.98. To avoid such variability in results, the Department’s regulation directs the Department to use what is

⁵² *See AR2 Final Results*, at Comment 6.

⁵³ *Id.*

essentially an average of the wage rates in a wide range of market economy countries, rather than have the result depend on which economically comparable country happens to be selected as the surrogate. Therefore, because labor data covering multiple countries are obtainable, the Department finds that its regression methodology, based on data from a wide range of market economy countries, enhances the accuracy, predictability, and stability of the wage rate.

Similarly, due to the variability in wage rates as correlated with GNI, relying on only a small subset of countries comparable to the PRC would not render a meaningful result for two reasons. First, relying on only wage rates from countries determined by the Department for surrogate country selection purposes to be comparable to the PRC (a data set consisting of five to six countries), would not provide the Department with a sufficiently large data set to conduct a reliable regression analysis. Second, conducting the regression analysis on a subset of comparable countries would return results limited only to those countries, and not the broader set of market economies contemplated by the Department's regulation.

Therefore, the Department's regulation is fully consistent with section 773(c)(4) of the Act, which allows for the Department to use prices or costs in one or more market economy countries. *See Proposed Rule*, 61 FR at 7345. The Department's regression methodology is a permissible means of determining the observed relationship between income and wages using market economy country data that, in aggregate, when applied to the NME's income, produce a factor that reflects market economy wage rates at a comparable level of economic development.

When the Department issued its *Proposed Rule*, and then its final regulations, following notice and comment procedures, it did not contemplate that all countries collectively used in the Department's regression analysis to determine a wage rate would be required to be significant producers of comparable merchandise from comparable economies in every case. Such a requirement would obviate the purpose of the Department's regulation concerning wage rates. In this respect, in proposing and implementing 19 CFR 351.408(c)(3), the Department determined that in calculating wage rates, an analysis different in some aspects from valuing other FOPs was warranted in light of its concerns about wide variances in wage rates between comparable economies. The Department's final wage rate regulation was also informed by its use of labor in all antidumping duty calculations, and the existence of a labor market in every economy, which obviates the necessity that the included countries be significant producers of the product under investigation or review.

The Department's regression methodology permits the agency to determine wage rates upon a consistent basis across many countries that is predictable and reasonable. GDLSK respondents' arguments and offered alternatives seek to undermine the predictable nature of that analysis. The Department has therefore rejected their suggested alternatives.

GDLSK respondents have argued that the Department's labor calculation is unreliable because it uses GNI data from China, which is not a market-driven economy. The Department disagrees. In accordance with section 773(c)(1)(B) of the Act, the Department determines that the GNI data from China provides the best available information to satisfy 19 CFR 351.408(c)(3), which stipulates that the Department will "calculate the wage rate to be applied in non-market economy proceedings each year." Because the equation to establish expected NME wages is based upon

two variables (wages and per capital GNI), using the non-market economy country's GNI provides a seed of data tied to the non-market economy country at issue to which the labor regression may be applied to derive a comparable market economy labor wage rate. The GNI figure is a widely used, broad-based indicator of a country's macroeconomic performance, is obtained from the *World Development Indicators* of the World Bank, and constitutes the "best available information" to the Department.

GDLSK respondents have expressed their preference for this review that the Department use Indian data to calculate a wage rate. However, as explained above, the use of data from a single country would be inconsistent with the agency's regulations and practice. GDLSK respondents' claim that the agency must only choose wage rates derived from a country that is a significant producer of comparable merchandise also seems inconsistent with the broad collection of data which the Department prefers in its regulations and practice for measuring this particular FOP. Moreover, as discussed above, the importance placed on the significant producer criterion by GDLSK respondents is misplaced. The Department's valuation of labor according to 19 CFR 351.408(c)(3) obviates the need for this criterion for labor.

GDLSK respondents have also expressed a preference for the Department's inclusion of all countries for which the requisite data are available in its regression analysis. The Department's 2005 calculation of expected NME wage rates for 2003 relies on a basket of countries that is the same as that used for the past several years, and is sufficiently robust to conduct a meaningful regression analysis. Recalculating the Department's regression analysis using a wholly different basket of countries would amount to a significant change in the Department's current methodology. The Department has established a public notice and comment process under which it is currently considering potential changes to its methodology for the calculation of expected NME wages. *See Expected Non-Market Economy Wages: Request for Comment on Calculation Methodology*, 70 FR 37761 (June 30, 2005) (*NME Wage Comment FR*).

Thus, the Department has determined, for the final results of this review, that the appropriate surrogate value for the wage rate for the PRC respondents continues to be the wage rate of \$0.97/hour that was calculated using the Department's regression-based methodology that can be found on Import Administration's website: <http://www.trade.gov/ia/>.

Comment 6: Calculation of Employee Benefits in Financial Ratios

Eswell argues that the Department should not reclassify "Gratuity Contribution" and "Provident Fund" as overhead expenses. Eswell argues that the Department offers no justification for the reclassification, and no logical reason to treat employee contributions to social security, pensions, and other benefits as overhead. Eswell argues that the ILO data on which the Department's reclassification is predicated include a "wages" subcategory and already reflect the full cost of labor. *See* Eswell Brief at 24-26.

Petitioners argue that it is reasonable for the Department to reclassify employee benefits to overhead, based on recent precedent, citing *Tables and Chairs*, at Comment 1B. Petitioners argue that the ILO data expressly exclude employee benefits like pension and social programs; thus, petitioners contend, those costs have not been captured by the Department's labor rate

methodology and it is reasonable to account for them in overhead expenses. Petitioners point out that Eswell acknowledged that the Department already included the cost of supervision and indirect labor in overhead,⁵⁴ and that the “provident fund” and the “gratuity fund” are paid to workers and non-workers regardless of their involvement in direct production. Furthermore, petitioners argue that the costs cover payments attributable to supervisory and indirect labor, and cannot be segregated from the amount paid to direct labor. Thus, petitioners argue that it is reasonable to classify these items as overhead costs under the circumstances. *See Petitioners’ Rebuttal Brief at 50-51.*

Department’s Position:

We agree with petitioners. After the *Preliminary Results* were issued, the Department reexamined its calculation of the surrogate financial ratios and requested comments from interested parties on reclassifying “Gratuity Contribution” and “Provident Fund” as overhead expenses. *See “Letter from Department of Commerce to Interested Parties,” dated February 7, 2006.* As we explained in *Persulfates from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 7725 (February 14, 2006), and accompanying Issues and Decision Memorandum, at Comment 3, and *Tables and Chairs*, at Comment 1B, moving the relevant employee benefits from direct labor to manufacturing overhead is consistent with our regression-based PRC wage rate calculation. The Department based its calculation of the expected PRC wage rate on the ILO’s categorization of information provided by the countries it surveys. Information from the ILO website defines wages and labor costs separately.⁵⁵ Specifically, Chapter 5 defines “wages” as:

The concept of earnings, as applied in wages statistics, relates to remuneration in cash and in kind paid to employees, as a rule at regular intervals, for time worked or work done together with remuneration for time not worked, such as for annual vacation, other paid leave or holidays. Earnings exclude employers’ contributions in respect of their employees paid to social security and pension schemes and also the benefits received by employees under these schemes. Earnings also exclude severance and termination pay.

Id.

Chapter 6, “Labour Costs,” are defined as including employee benefits:

For the purposes of labour cost statistics, labour cost is the cost incurred by the employer in the employment of labour. The statistical concept of labour cost comprises remuneration for work performed, payments in respect of time paid for but not worked, bonuses and gratuities, the cost of food, drink and other payments in kind, cost of workers’ housing borne by employers, employers’ social security expenditures, cost to the employer for vocational training, welfare services and miscellaneous items, such as transport of workers, work clothes and recruitment, together with taxes regarded as labour cost *Id.*

⁵⁴ See Eswell Brief at 25.

⁵⁵ See ILO Website: <http://laborsta.ilo.org/>.

See Persulfates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 71 FR 7725 (February 14, 2006), and accompanying Issues and Decision Memorandum, at Comment 3.

The wages category (Chapter 5) is exclusive of employee benefits such as pension and social security, while the labor cost category (Chapter 6) is inclusive of these employee expenses. As we stated in *NME Wage Comment FR*, 70 FR at 37762, the Department based its calculation of the regression-based expected PRC wage rate on data from Chapter 5B of the *Yearbook of Labour Statistics*. In the instant administrative review, the MHPC surrogate financial data allow the Department to segregate labor expenses into “Wages” (which corresponds to Chapter 5B of the ILO database and, therefore, to the Department’s expected NME wage rate), and the other labor costs (which are not included in the Department’s calculated NME wage rate).

Accordingly, as consistent with the methodology employed in calculating the expected PRC wage rate, and as articulated in *Tables and Chairs*, at Comment 1B, we have determined that it is appropriate to include these employee benefit categories in factory overhead in order to ensure that they are captured in our calculation of normal value. Therefore, to value the total cost of labor for purposes of the final results, the Department has reclassified the labor expenses of “Gratuity Contributions,” and “Provident Fund” as manufacturing overhead.

Company-Specific Issues

Shanghai Eswell-Related Issue:

Comment 7: Valuation of By-Product for Eswell

Eswell argues that the Department should grant Eswell a by-product offset for the sale of scrap honey for purposes of the normal value calculation. Eswell states that contrary to the Department’s claim that Eswell’s supplier did not provide documentation that the material was sold, it provided clear documentation of sales of scrap honey in Eswell’s response of May 15, 2005 to the Department’s Supplemental A, C, and D Questionnaire, at Exhibit 32, in the Inventory Subsidiary Ledger. Eswell argues that in absence of any evidence to suggest it did not sell scrap honey, the Inventory Subsidiary ledger maintained in the ordinary course of record keeping provides documentation that scrap honey was sold during the POR. Therefore, Eswell argues that the Department should include scrap honey sold in the calculation of Eswell’s normal value. *See* Eswell Brief at 22-23.

Petitioners argue that the Department should not credit Eswell’s claimed scrap honey sales. Petitioners contend that the entries in the inventory ledger of scrap honey showing movement in and out of inventory do not establish sales of the scrap honey by the supplier. Petitioners further argue that Eswell failed to provide any documentation or record of the sale beyond the company’s own inventory ledger, and that the lack of evidence sheds doubt that sales occurred. Furthermore, petitioners argue that the Department cannot be asked to rely on the absence of evidence that scrap honey was not sold as affirmative evidence that it was sold and that it is not the Department’s job to prove a negative. *See* Petitioners’ Rebuttal Brief at 49-50.

Department's Position:

We agree with petitioners, and for the final results we will continue to deny a by-product offset for scrap honey because Eswell has not met its burden in demonstrating that scrap honey its supplier generated during the POR was sold during the POR. Despite two requests from the Department⁵⁶ to provide evidence of the sale of scrap honey, Eswell only provided documentation from its supplier's sub-ledger. Without other documentation, such as receipts or bank statements, the supplier's sub-ledger does not provide sufficient evidence of the sale of scrap honey. In the previous review, Eswell provided sufficient documentation of the sale of scrap honey by tying reported sales of scrap honey to invoices and payment vouchers.⁵⁷ Accordingly it was on notice as to the necessary documentation to substantiate its claim. Because of Eswell's failure to submit such documentation despite two requests by the Department, we are continuing to deny a by-product offset for scrap honey.

Comment 8: Calculation of Indirect Selling Expenses for Eswell

Eswell argues that the Department incorrectly calculated Eswell's indirect selling expenses by including taxes. Eswell contends that its original total indirect selling expenses included taxes, but that this calculation was subsequently revised to exclude taxes. Respondent argues that the new indirect selling expense ratio should be applied to the gross unit price of Eswell's sales in the Department's final results. *See* Eswell Brief at 23-24.

Department's Position:

The Department agrees with Eswell and has recalculated the indirect selling expense ratio by excluding taxes from the numerator of the calculation. We have applied this revised ratio to Eswell's reported gross unit price to calculate the indirect selling expenses.⁵⁸

Jiangsu Kanghong-Related Issues:

Comment 9: Appropriate Factors of Production to Value for Jiangsu Kanghong

Jiangsu Kanghong argues that the Department should use the factors of production, or inputs, associated with its beekeeping operation to calculate normal value. Jiangsu Kanghong cites *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 4986, 4993 (January 31, 2003) (*Frozen Fish Prelim Results*), where the Department wrote: "Our general policy, consistent with section 773(c)(1)(B) of the Act, is to value the factors of production that a respondent uses to produce the subject merchandise. If an NME respondent is an integrated producer, we take into account the factors utilized in each stage of the production process." Jiangsu Kanghong also states that the Department has, in fresh garlic from the PRC and certain frozen and canned warmwater

⁵⁶ See April 15, 2005, and July 15, 2005, supplemental questionnaires from the Department to Eswell.

⁵⁷ See "Memorandum to the File: Verification of Sales of Shanghai Eswell Enterprise Co., Ltd. and of Factors of Production for Nanjing Lishui Changli Bees Product Co., Ltd.'s in the Antidumping Duty Administrative Review of Honey from the People's Republic of China (Public Version)," dated April 15, 2005, at page 27 (tying quantity of reported scrap honey sales for each month to original sales invoices and payment vouchers).

⁵⁸ See Eswell Final Analysis Memorandum, dated June 9, 2006, for details.

shrimp from the PRC, used factors of production from the garlic growing stage and from the shrimp farming stage, respectively, to calculate normal value. *See* GDLSK Respondents' Brief at 49.

Jiangsu Kanghong argues that its reported factors of production for raw honey are reliable, despite the Department's statements to the contrary in the *Preliminary Results*. Jiangsu Kanghong claims that it reported an accurate number of beehives and provided public information during verification from the website www.bee.com.cn to support the number of bees per hive that it reported (between 20,000 and 50,000). It admits this number is an estimate, but states that it would be unreasonable for the Department to demand an exact number of bees and that it made a good faith effort to place an accurate number on the record. Jiangsu Kanghong also states that the Department cites no evidence to suggest that its estimate is inaccurate. *See* GDLSK Respondents' Brief at 50-51.

Next, Jiangsu Kanghong argues that it reported a "more accurate" number of days in the raw honey production season than that determined by the Department because the Department's number came from an internal production document indicating the date that raw honey production began, which is not the same date the bee season actually began, as the season must necessarily start before the date recorded in that report. Jiangsu Kanghong states that the reported average life expectancy of a bee also is, by definition, an estimate. However, it claims that it based this estimate on information from a website (www.fsjx.net), and again made a good faith effort to answer this question to the best of its ability, and that no evidence exists on the record to contradict that estimate. *See* GDLSK Respondents' Brief at 51.

In the *Preliminary Results* the Department, Jiangsu Kanghong states, wrote that there is no authoritative source on the record supporting Jiangsu Kanghong's claim of the type of bees its beekeepers use. Jiangsu Kanghong claims that it did report the type of bees used by its beekeepers in its June 9, 2005, supplemental section D response and that one of the beekeepers the Department spoke to at verification said his bees were Italian and that he purchased them 25 years ago. Jiangsu Kanghong claims that the reality of its businesses practices makes it impossible to answer this question with any more specificity, and that in *Olympic Adhesives, Inc v. U.S.*, 899 F.2d 1565, 1573 (1990) (*Olympic Adhesives*), the court held that participants in antidumping proceedings cannot be penalized for not providing information that either does not exist or is not kept in the normal course of business. *See* GDLSK Respondents' Brief at 52.

In response to the Department's statements in the *Preliminary Results* that Jiangsu Kanghong did not report three inputs, the respondent argues that it did not report sugar consumption because it did not incur sugar costs during the POR. It only began renting the beehives in March 2004 and the beekeepers told the Department at verification that bees are only fed during the winter season, which Jiangsu Kanghong claims lasts from December through February in China. The royal jelly scraper was not reported, Jiangsu Kanghong admits, but should be counted as overhead. The third missing input, warming cloth, was actually reported under the name water-proof cover and should also be counted as overhead, Jiangsu Kanghong claims. Finally, the measurement errors that the Department found at verification regarding the reported quantities or measurements of Jiangsu Kanghong's beekeeping inputs and in the reported supplier distances

are inevitable, Jiangsu Kanghong claims, where a respondent does not quantify inputs in its normal course of business. *See* GDLSK Respondents' Brief at 53-54.

It is the Department's well-established practice, according to Jiangsu Kanghong, to treat as raw materials those inputs that are "incorporated into and become part of, the subject merchandise." Though in its *Preliminary Results* the Department stated that bees should be considered a factor of production rather than overhead because they are consumed, similar to other inputs, Jiangsu Kanghong argues that unlike other inputs, such as bee medicine, beekeepers do not have to buy bees and/or queen bees because they self-produce. The Department was told this by one of the beekeepers at verification, Jiangsu Kanghong states, when he stated that he had never purchased replacement bees. Bees should therefore be treated as fixed assets, Jiangsu Kanghong claims. As for beehives and bee equipment, Jiangsu Kanghong states that these inputs are not incorporated into the raw honey and should be considered processing machinery, which is never reported as a factor of production. Bees, beehives, and the beekeeping equipment, Jiangsu Kanghong argues, should all be considered overhead. *See* GDLSK Respondents' Brief at 54-55.

Furthermore, Jiangsu Kanghong claims it is a vertically integrated company because it bears the risk for output, quality, and consumption, pays fixed rental fees regardless of the amount of raw honey produced, and employs, manages, and pays a salary to the beekeepers. *See* GDLSK Respondents' Brief at 55.

In their rebuttal brief, petitioners claim that the Department was correct to use the value of raw honey for its analysis of Jiangsu Kanghong. Petitioners state that Jiangsu Kanghong is not a vertically integrated producer of honey, and that, in the final determination of certain frozen fish fillets from Vietnam⁵⁹ –the case cited by Jiangsu Kanghong– the Department concluded that even though certain fish processors appeared to be fully integrated, they were not because they did not bear the full risk of loss for the growing operations. In addition, petitioners state that it does not matter if Jiangsu Kanghong were a vertically integrated producer because its data could not be verified. *See* Petitioners' Rebuttal Brief at 42-43.

Jiangsu Kanghong's fact pattern is similar to *Frozen Fish Fillets*, petitioners claim, as it does not own any of the primary factors of production for honey, rather it leases the bees and beehives. The lease agreement, furthermore, petitioners state, is little more than a negotiated price per pound based on the level of production of the hive. Even Jiangsu Kanghong admits this, according to petitioners, because it records the rental fees paid to bee farmers as material purchases in its own books and records. A plain reading of the lease agreement, petitioners argue, shows that the beekeepers are responsible for man-made damages and normal wear and tear to the hives, care, proliferation, and separation of the bee colonies, and for ensuring that the bee colonies make it through the winter. Thus, petitioners argue, Jiangsu Kanghong is not a vertically integrated producer because the bee farmers provide the bees and beehives and bear the risk of loss. *See* Petitioners' Rebuttal Brief at 43-45.

⁵⁹ See Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 68 FR 37116 (June 23, 2003) (*Frozen Fish Fillets*), and accompanying Issues and Decision Memorandum, at Comment 3.

The standard lease agreement restricts the rental period to a limited number of years, petitioners continue, which means that Jiangsu Kanghong does not have the same capital risks or ownership interests that it would have as an actual owner of the primary factors of production. Just as in *Frozen Fish Fillets*, at Comment 3, petitioners argue, the rental of assets and payment based on output transfers risk away from Jiangsu Kanghong and toward the beekeepers. Thus, petitioners contend that Jiangsu Kanghong is not a vertically integrated producer. Furthermore, at verification, the Department found numerous and significant problems with Jiangsu Kanghong's factors of production data, according to petitioners, making the inputs unverifiable which mean they cannot be relied on to calculate normal value. *See Petitioners' Rebuttal Brief at 45-46.*

Petitioners note that Jiangsu Kanghong argues that it is unreasonable for the Department to demand exact numbers and that the company made a good faith effort to answer the Department's questions. The Department's verification report shows, according to petitioners, that Jiangsu Kanghong's estimate of the number of hives was not accurate, based on the count the Department verifiers took of the number of beehives possessed by the two farmers it visited. The number of bees per hive that Jiangsu Kanghong originally reported in its responses differed from the 20,000 to 50,000 bees per hive it reported at verification as well, which does not constitute a reliable estimate, petitioners contend. Along with the other errors and omissions the Department found in Jiangsu Kanghong's data, petitioners argue, the Department was correct not to rely on Jiangsu Kanghong's estimates and to rely on the surrogate vale of raw honey for its analysis. *See Petitioners' Rebuttal Brief at 46-47.*

Petitioners claim that the Department should also reject Jiangsu Kanghong's contention that bees and beehives are not factors of production. Honeybees themselves transform the nectar they gather into honey, petitioners state, and the harder bees work during the honey season, the shorter their lifespan. This shows that bees are incorporated into the honey and consumed in production, petitioners contend. Further, even if the Department were to value Jiangsu Kanghong's beekeeping inputs, according to petitioners, it could not because Jiangsu Kanghong placed no surrogate value information on the record regarding these inputs. *See Petitioners' Rebuttal Brief at 47-49.*

Department's Position:

Based on our analysis of the information on the record and of Jiangsu Kanghong's data in the *Preliminary Results*, we determine that Jiangsu Kanghong is unable to accurately record and substantiate the complete costs associated with producing raw honey. Therefore, the Department will continue to value the raw honey consumed by Jiangsu Kanghong using a surrogate value for the raw honey itself rather than an FOP approach.

The Department outlined the many errors it found in the FOP data for raw honey submitted by Jiangsu Kanghong and the lack of reliable information regarding bee consumption on the record during the POR in the *Preliminary Results*. Because of the numerous data errors, and Jiangsu Kanghong's assertions in its case brief that it is unable to report accurate beekeeping inputs, the Department determines that valuing the intermediate input for the production of honey in this instance will lead to a more accurate result than valuing the individual beekeeping FOPs,

consistent with *Frozen Fish Fillets*, at Comment 3, and *Garlic 2006 Final Results*, at Comment 1.

Record evidence in this review refutes Jiangsu Kanghong's arguments that its reported FOPs are accurate and complete. For instance, to calculate a factor of production for the number of bees per kilogram of processed honey (which the Department requested), Jiangsu Kanghong used the number of bee farmers, raw honey produced during the POR, and consumption of raw honey per kilogram of processed honey, but relied on estimates for the number of bee hives, bees per hive, days in the POR bee season, and average bee life expectancy. Jiangsu Kanghong argues that it placed data on the record, from www.bee.com.cn and www.fsjx.net, to substantiate the number of bees per hive and the average bee life expectancy that it reported. Jiangsu Kanghong states that this demonstrates a good faith effort on its part to answer these questions to the best of its ability, and that no evidence exists on the record to contradict these two estimates. However, the Department has no knowledge of the veracity of these sources, and Jiangsu Kanghong has provided no information to support that the data found on these websites is considered authoritative. The Department has rejected these data because it did not know in what manner the data were collected or the nature of the data source. The Department does not dispute that Jiangsu Kanghong reported a specific species for the bees maintained by the beekeepers or that one of the beekeepers it interviewed at verification named a country of origin for his bees (though not a species name). However, the Department notes that only one of all of the beekeepers with whom Jinagsu Kanghong maintains lease agreements addressed the origin of his bees, which the Department does not consider definitive. Furthermore, as Jiangsu Kanghong admits in its brief, there is no documentary support on the record to substantiate that all or even the majority of the beekeepers use the species type that Jiangsu Kanghong reported.

The other data problems the Department found at verification include three unreported inputs (sugar, warming cloth, and royal jelly scraper), inaccurate measurements for beekeeping inputs and supplier distances, not being able to reconcile the bee medicine input or the by-product packing inputs, the majority of beekeeping labor hours incorrectly reported, inconsistencies in what Department verifiers saw at verification regarding repairs to hives and what the beekeepers interviewed claimed, and reports by the beekeepers interviewed that they did not consume the bee medicine input during the POR. See "Memorandum to the File: Verification of U.S. Sales and Factors of Production for Respondent Jiangsu Kanghong Natural Healthfoods Co., Ltd. (Jiangsu Kanghong)," dated December 9, 2005 (JK Verification Report).

Of all these problems, Jinagsu Kanghong addresses three of them in its case brief. Regarding the unreported inputs, Jiangsu Kanghong claims it would not have used sugar during the POR because sugar is only used from December to February and they did not lease the bees until March 2004. The Department agrees it does not know if Jiangsu Kanghong used sugar during the POR, however, at verification company officials told the Department that the honey production season lasts from April to September, with the remainder of months being non-production months. From the Department's understanding, based on its verification, this is the time –in this case, September 2004 through April 2005– that the beekeepers would need to use sugar, and September to November 2004 overlap with the instant POR. Regarding Jiangsu Kanghong's claim that the Department confused the warming cloth with the water proof cover input, the Department points Jiangsu Kanghong to its verification report, which clearly shows

that the water proof cover, placed on top of the hive, is a separate, distinct input from the unreported warming cloth, which is placed under the wooden hive cover. *See* JK Verification Report at 20, 28. The royal jelly scraper, Jiangsu Kanghong argues, should be treated as overhead. However, because of the limited information submitted by Jiangsu Kanghong with regard to this input, the Department does not have complete data on which to make an informed decision on this matter. Regarding the beekeeping input and supplier distance measurement errors, Jiangsu Kanghong claims these errors are inevitable where a respondent does not quantify inputs in its normal course of business. The Department, as discussed below, agrees with Jiangsu Kanghong that the nature of its operation seems to make it impossible for it to report accurately beekeeping stage inputs, including mileage distances, and as a result, as noted in this decision, has determined to value the raw honey as an intermediate product.

Contrary to Jiangsu Kanghong's argument regarding the classification of bees in the production process, as the Department stated in its *Preliminary Results*, the limited data placed on the record suggest that bees should be considered a factor of production rather than treated as overhead because they are "consumed" in the production process. As petitioners stated, honeybees themselves transform the nectar they gather into honey and the harder the bees work during the honey season, the shorter their lifespan. Jiangsu Kanghong argued that because bees mostly self-produce, bees should not be considered a factor of production. While the Department does not have complete data on which to make an informed decision on this matter, because Jiangsu Kanghong provided very limited information, we find Jiangsu Kanghong's arguments to be unsubstantiated.

Because of the many errors in the factors of production data for raw honey submitted by Jiangsu Kanghong, the Department finds that it is not necessary to reach a determination on whether Jiangsu Kanghong is sufficiently vertically integrated to value the raw honey using an FOP approach. Because we do not find the factor data for raw honey to be reliable due to the lack of reliable information regarding bee consumption during the POR, and the many errors found in the reported data at verification, the Department will continue to value the raw honey consumed by Jiangsu Kanghong.

As Jiangsu Kanghong itself argues, the nature of its operation seems to make it impossible for it to report beekeeping stage inputs accurately. Jiangsu Kanghong even states that it should not be asked to do so since it does not keep such records in the normal course of business. The court held in *Olympic Adhesives*, Jiangsu Kanghong argues, that participants in antidumping proceedings could not be penalized for not providing information that either does not exist or is not kept in the normal course of business. The Department does not find that valuing Jiangsu Kanghong's normal value using the intermediate input methodology constitutes a penalty against the respondent. Rather, in light of the fact that Jiangsu Kanghong claims it cannot report accurate data, and because our findings at verification suggest the majority of data associated with the beekeeping inputs is reported inaccurately, the Department finds that it is more accurate to use an intermediate input methodology to calculate normal value.⁶⁰

⁶⁰ We note that Jiangsu Kanghong also reported a consumption rate for raw honey, which the Department verified; therefore, the Department is using respondent's own information to calculate normal value.

We believe the intermediate-product valuation methodology for Jiangsu Kanghong is in line with the Department's current practice as described above with respect to the final determination of polyvinyl alcohol from the PRC,⁶¹ *Garlic 2006 Final Results*, and *Frozen Fish Fillets*, and that it will provide us with an objective and reliable value on which to base Jiangsu Kanghong's margin calculations to address concerns of accuracy. In future reviews, should Jiangsu Kanghong be able to provide sufficient factual evidence that it maintains the necessary information in its internal books and records that would allow us to establish the completeness and accuracy of the reported FOPs, we will revisit this issue and consider whether to use its reported FOPs in the calculation of normal value.

RECOMMENDATION:

Based on our analysis of the comments received, we recommend adopting all of the above changes and positions, and adjusting the margin calculation programs accordingly. If accepted, we will publish the final results of the review and the final weighted-average dumping margins in the *Federal Register*.

AGREE_____ DISAGREE_____

David M. Spooner
Assistant Secretary
for Import Administration

Date

⁶¹ See Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China, 68 FR 47538 (August 11, 2003), and accompanying Issues and Decision Memorandum, at Comment 1.