

from warehouse for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: September 26, 2001.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

## Appendix I—Issues in Decision Memo

### Comments and Responses

#### General Issues

1. Cooperation of PRC Producers/Exporters and Compliance Under the *Suspension Agreement*
2. Critical Circumstances
3. Factory Overhead, SG&A, and Profit
4. Surrogate Value for Raw Honey
5. Surrogate Value for Beeswax
6. Surrogate Value for Scrap Honey
7. Surrogate Value for Drums
8. Surrogate Value for Energy
9. Labor Hours

#### Company-Specific Issues

##### Zhejiang

10. Zhejiang Willing
11. Raw Honey
12. Water
13. Electricity

##### Inner Mongolia

14. Movement Expenses

##### Kunshan

15. Inland Insurance
16. Electricity

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A–357–812]

### Notice of Final Determination of Sales at Less Than Fair Value; Honey From Argentina

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

**ACTION:** Notice of final determination of sales at less than fair value.

**EFFECTIVE DATE:** October 4, 2001.

#### FOR FURTHER INFORMATION CONTACT:

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

### The Applicable Statute and Regulations

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

### Final Determinations

We determine that honey from Argentina is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

### Case History

We published in the **Federal Register** the preliminary determination in this investigation on May 11, 2001. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Honey from Argentina*, 66 FR 24108 (May 11, 2000) (*Preliminary Determination*). Since the publication of the *Preliminary Determination* the following events have occurred.

On May 11, 2001, Asociacion Cooperativas Argentinas (ACA), one of the Argentine respondents, requested that the Department postpone its final determination to the fullest extent permitted by the statute and the Department's regulations. On May 29, 2001, the Department postponed the final determination until no later than 135 days after publication of the preliminary determination in the **Federal Register**. See 66 FR 30413 (June 6, 2001).

On May 11, 2001, one of the Argentine respondents, Radix S.R.L. (Radix), which withdrew from participation in the investigation on May 1, 2001, requested that the Department allow it to re-enter the investigation. In a letter of May 16, 2001, the petitioners objected to the request by Radix. On June 12, 2001, the Department notified Radix that it could re-enter the ongoing investigation.

Requests for a public hearing were received by the Department from petitioners on June 7, 2001, and from ACA on June 4, 2001.

On June 11, 2001 and June 18, 2001, respondents ACA and Radix submitted, respectively, additional factual information regarding the cost of production of honey in Argentina. On June 20, 2001, petitioners submitted a

letter to the Department requesting that the cost information submitted by Radix be rejected for untimeliness. On June 21, 2001, petitioners submitted rebuttal factual information in response to the cost of production information submitted by ACA.

The Department verified sections A through C of ACA's responses from June 18 through June 22, 2001, at ACA's headquarters in Buenos Aires, Argentina. *See Memorandum To The File; "Verification of ACA's Questionnaire Responses"*, July 27, 2001. The Department also verified sections A through C of responses received from Radix from June 25 through June 29, 2001, at Radix's headquarters in Buenos Aires, Argentina. *See Memorandum To The File; "Verification of Radix's Questionnaire Responses"*, July 26, 2001. Public versions of these, and all other Departmental memoranda referred to herein, are on file in the Central Records Unit, room B–099 of the main Commerce building.

On August 6, 2001, ACA, Radix, and petitioners filed case briefs. Petitioners submitted objections on August 9, 2001, to ACA's proprietary treatment of certain information and submission of new factual information contained in ACA's brief. We received rebuttal briefs from all parties on August 13, 2001. On August 24, 2001, ACA re-submitted its case brief.

The Department issued a preliminary margin analysis for Radix on August 15, 2001. Comments from petitioners and Radix were received on August 22, 2001. Rebuttal comments were received on August 27, 2001. The public hearing in this proceeding was held on August 28, 2001. On September 4, 2001, ACA and Radix submitted information requested by the Department at the hearing. On September 18, 2001, ACA submitted additional information to clarify their September 4, 2001 response. On September 10, 2001, petitioners submitted comments on Radix's and ACA's responses to the Department's August 28, 2001 request for additional information.

On August 24, 2001, a proposed suspension agreement was initialed by the authorized legal representative of ACA, Radix, Con Agra Argentina S.A., Honey Max S.A., Nexco S.A., CIA Europea Americana S.A., Foodway S.A., CIA Inversora Platense S.A., Miel Ar, Trans Honey S.A., Miel Gibbons, Times S.A., and a representative of the U.S. Department of Commerce. Comments from interested parties were submitted on September 14, 2001. This proposed agreement has not been accepted.

Although the deadline for this determination was originally September 24, 2001, in light of the events of September 11, 2001, and the subsequent closure of the Federal Government for reasons of security, the time frame for issuing this determination has been extended by two days.

#### Period of Investigation

The period of investigation (POI) is July 1, 1999 through June 30, 2000.

#### Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this investigation are addressed in the "Issues and Decision Memorandum" (Decision Memorandum) from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated September 24, 2001, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in B-099.

In addition, a complete version of the Decision Memorandum can be accessed directly on the World Wide Web at [ia.ita.doc.gov/frn/frnhome](http://ia.ita.doc.gov/frn/frnhome). The paper copy and electronic version of the Decision Memorandum are identical in content.

#### Scope of Investigation

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

The merchandise subject to these investigations is currently classifiable under subheadings 0409.00.00, 1702.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and U.S. Customs Service ("U.S. Customs") purposes, the Department's written description of the merchandise under investigation is dispositive.

#### Facts Available

Section 776(a) of the Act provides that "if any interested party or any other person—(A) withholds information that has been requested by the administering authority, (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title." The statute also requires that certain conditions be met before the Department may resort to the facts otherwise available. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate. Briefly, section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority" if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, and the Department can use the information without undue difficulties, the statute requires it to do so.

As noted in the *Preliminary Determination*, ConAgra failed to respond to the Department's December 19, 2000, request for information. See 66 FR 24110 (June 6, 2001). Nor has ConAgra participated in the remainder of the investigation. Therefore, in this final determination, the Department will resort to the use of facts available for this respondent, in accordance with section 776(a)(2)(A) of the Act. Further, as we stated in the *Preliminary Determination*, section 782(d) and (e) are inapplicable in this instance because ConAgra failed to provide the requested

information. *Id.* Moreover, we have determined that ConAgra's failure to respond to any portions of the Department's December 19, 2000, questionnaire demonstrates that the company has not cooperated to the best of its ability. Therefore, pursuant to section 776(b) of the Act, we will apply an adverse inference in selecting a margin from among facts otherwise available. See Memorandum from Donna Kinsella to Richard O. Weible, Honey from Argentina: Final Determination of Sales at Less Than Fair Value—The Use of Facts Available for ConAgra Argentina, S.A., and the Corroboration of Secondary Information, dated May 4, 2001 (ConAgra Facts Available Memorandum).

For a further discussion of our application of facts available, see the "Facts Available" section of the Decision Memorandum, which is on file in B-099 and available on the Web at [ia.ita.doc.gov/frn/frnhome](http://ia.ita.doc.gov/frn/frnhome).

#### Changes Since the Preliminary Determination

Based on our analysis of comments received and findings at verification, we have made certain changes in the margin calculations. We have also corrected certain programming and clerical errors in our preliminary results, where applicable. Any allegations of programming or clerical errors are discussed in the relevant sections of the "Decision Memorandum," accessible in B-099 and on the Web at [ia.ita.doc.gov/frn/](http://ia.ita.doc.gov/frn/).

#### Suspension of Liquidation

In accordance with section 735(c)(1)(B)(ii) of the Act, we are directing the U.S. Customs Service (Customs) to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after May 11, 2001, the date of publication of the preliminary determination in the **Federal Register**.

Section 772(c)(1)(C) of the Act states that the price used to establish export price and constructed export price shall be increased by the amount of any countervailing duty imposed on the subject merchandise under subtitle A to offset an export subsidy and reduced by the amount, if included in such price, of any export duty, or other charge imposed by the exporting country on the exportation of the subject merchandise to the United States, other than an export tax, duty or other charge described in section 771(6)(C). Since antidumping duties cannot be assessed on the portion of the margin attributed to export subsidies there is no reason to

require a cash deposit or bond for that amount. *See e.g., Notice of Amended Final Determination of Sales at Less Than Fair Value; Structural Steel Beams from South Korea*, 65 FR 50502 (Aug. 18, 2001). The Department has determined in its Final Affirmative Countervailing Duty Determination: Honey From Argentina that the product under investigation benefitted from export subsidies. Normally, where the product under investigation is also subject to a concurrent countervailing duty investigation, we instruct Customs to require a cash deposit or posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated below, minus the amount determined to constitute an export subsidy codified at 19 U.S.C. 736(a)(1) (2000). *See e.g., Notice of Antidumping Duty Order: Stainless Steel Wire Rod From Italy*, 63 FR 49327 (September 15, 1998). Accordingly, for cash deposit purposes we will subtract from ACA's and Radix's cash deposit rate that portion of the rate attributable to the export subsidies found in the countervailing duty investigation involving ACA and Radix. We will make the same adjustment to the "All Others" cash deposit rate by subtracting the rate attributable to export subsidies found in the countervailing duty investigation of honey from Argentina.

We will instruct Customs to require a cash deposit or the posting of a bond for each entry equal to the weighted-average amount by which the NV exceeds the EP, adjusted for the export subsidy rate. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin (percent)
Asociacion Cooperativas Argentinas (ACA) .....	38.71
Radix S.R.L. (Radix) .....	32.56
ConAgra Argentina .....	60.67
All Others .....	36.59

#### ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, the proceeding will be terminated and all securities

posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: September 26, 2001.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

#### Appendix I—Issues in Decision Memo Comments and Responses

##### General

1. Adverse Facts Available
2. Cost of Production/Constructed Value Profit
3. Middlemen Reseller Expenses

##### Radix

4. Facts Available
5. German Testing Expenses
6. General and Administrative and Indirect Selling Expenses
7. Sales Reconciliation
8. Reembolso Reimbursements
9. Interest Expense
10. Inventory Carrying Costs

##### ACA

11. Indirect Selling Expenses
12. General and Administrative Expenses
13. Interest Expenses
14. German Testing Expenses
15. German Warranty Expenses
16. International Freight Expenses
17. Differences in Physical Characteristics in Merchandise
18. Level of Trade

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#### DEPARTMENT OF COMMERCE

##### International Trade Administration

**[C-357-813]**

#### Final Affirmative Countervailing Duty Determination: Honey From Argentina

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

**ACTION:** Notice of final affirmative countervailing duty investigation.

**SUMMARY:** On March 13, 2001, the Department of Commerce (the Department) published in the **Federal Register** its preliminary affirmative determination in the countervailing duty investigation of honey from Argentina. Based on our analysis of the questionnaire responses, verification,

and the comments submitted by the parties, we determine that subsidies are being conferred on the manufacture, production and export of honey from Argentina. The subsidy rates in this final determination differ from those in the preliminary determination. The revised final subsidy rates for the investigated producers/exporters are listed below in the "Suspension of Liquidation" section of this notice.

**EFFECTIVE DATE:** October 4, 2001.

#### FOR FURTHER INFORMATION CONTACT:

Thomas Gilgunn at (202) 482-4236, Holly Hawkins at (202) 482-0414 or Christian Hughes at (202) 482-0648, Office of AD/CVD Enforcement VII, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

#### SUPPLEMENTARY INFORMATION:

##### Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the Tariff Act of 1930, as amended. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2000).

##### Background

On March 13, 2001, the Department published the results of its preliminary determination in the investigation of Honey From Argentina. *See Honey from Argentina: Preliminary Affirmative Countervailing Duty Determination and Alignment with Final Antidumping Determination on Honey from the People's Republic of China*, 66 FR 14521 (Preliminary Determination). We invited interested parties to comment on the *Preliminary Determination*.

On April 3, 2001, we issued a supplemental questionnaire to the Government of Argentina. We received a response to this questionnaire on April 30, 2001. On May 7, 2001, we received comments from petitioners regarding the verification of the questionnaire responses. Verification of the questionnaire responses provided by the Government of Argentina (GOA) was conducted May 30 through June 11, 2001. We also met with an independent banker in Argentina during this time period.

On May 31, 2001, we postponed the final determination in this investigation until September 24, 2001, pursuant to the postponement of the final determination in the companion antidumping duty investigation of honey from the People's Republic of China with which this investigation had