A-570-831
AR: 11/1/06-10/31/07
NSR: 11/1/06-10/31/07
PUBLIC DOCUMENT
IA/O6: SL/NC/SA

DATE: June 8, 2009

MEMORANDUM TO: Ronald Lorentzen
Acting Assistant Secretary
for Import Administration

FROM: John Andersen
Acting Deputy Assistant Secretary
for Import Administration

SUBJECT: Fresh Garlic from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the 13th Antidumping Duty Administrative and New Shipper Reviews and Rescission, In Part, the Antidumping Duty Administrative and New Shipper Reviews

SUMMARY

We have analyzed the case and rebuttal briefs submitted by Petitioners;[1] Weifang Shennong Foodstuff Co., Ltd. (WFSN), Anqiu Friend Food Co. Ltd. (Anqiu Friend) and Anqiu Haoshun Trade Co., Ltd. (Haoshun) (collectively, WAA); Zhengzhou Yuanli Trading Co. Ltd. (Yuanli); and Ningjin Ruifeng Foodstuff Co., Ltd. (Ningjin) in the antidumping duty administrative review (AR) and new shipper reviews (NSRs) of fresh garlic from the PRC. The Department of Commerce (Department) published the preliminary results for these reviews on December 8, 2008. See Fresh Garlic from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative and New Shipper Reviews and Intent to Rescind, In Part, the Antidumping Duty Administrative and New Shipper Reviews, 73 FR 74462 (December 8, 2008) (Preliminary Results). The period of review (POR) is November 1, 2006 through October 31, 2007. Following the Preliminary Results and analysis of the comments received, we made changes to the margin calculations. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is a complete list of issues for which we received comments and rebuttal comments by parties:

General Issues:

Comment 1: Intermediate Input Methodology
Comment 2: Garlic Bulb Surrogate Value
Comment 3: Surrogate Financial Ratios
Comment 4: Timing of Petitioners' Surrogate Value Submission

[1] The Fresh Garlic Producers Association: Christopher Ranch L.L.C.; The Garlic Company; Valley Garlic; and Vessey and Company, Inc. (Petitioners).

Comment 5: Water Valuation
Comment 6: Paper Label Valuation
Comment 7: Yield Factor Valuation
Comment 8: Per Unit Assessment
Comment 9: Anqiu Friend's Affiliations
Comment 10: Bona Fides of New Shipper Companies
Comment 11: Rescission of Chenhe and Greening

DISCUSSION OF THE ISSUES

Comment 1: Intermediate Input Methodology

Yuanli argues that the Department should abandon the intermediate input methodology (IIM) it has adopted in recent garlic reviews and instead use a price-to-price comparison, as authorized under Section 773(c)(2) of the Tariff Act of 1930, as amended (the Act). Alternatively, Yuanli argues that any surrogate value used to value Yuanli's factors of production (FOPs) should be based on public information as to Indian garlic imports, and not on the "non-public" Azadpur prices provided by Petitioners. See below at Comment 2.

Yuanli contends that the Department concluded that Yuanli's production factors were inadequate because Yuanli "subcontracted nearly the whole production process to unaffiliated parties, and thus did not itself incur any of the normal production factors (water, electricity, fertilizer, labor, etc.) that one normally sees in connection with the production in China of an agricultural product." Yuanli argues that proper actual FOPs could have been calculated by reference to similar rental/operation arrangements in India or elsewhere. Yuanli further states that it requested to be informed and allowed to provide additional supplemental information, as necessary, if the Department determined Yuanli's FOP information was insufficient to perform a full factors analysis.

Yuanli argues that it produced and exported only whole, unprocessed garlic bulbs and that the intermediate input in this case is the finished subject merchandise itself. In such situations, Yuanli argues, the Department must abandon factors analysis and move instead to a third-country price-to-price analysis, following the statutory requirements of Section 773(c)(2) of the Act. However, Yuanli contends, the Department has created a "monstrous Frankensteinish hybrid" by using a substitute market economy selling price in a "skewed and nonsensical distortion" of the factors analysis, which enables manipulation of the analysis by use of an improper surrogate and the double counting of various selling and financial expenses. Specifically, Yuanli argues the Indian garlic bulb identified for the surrogate value for the "intermediate bulb factor" is packed, finished, whole garlic that is market-ready and transported from the farm to the selling place or terminal, with various commissions, direct and indirect selling expenses, taxes and fees included in the price. Yuanli argues that since the price being used as the surrogate is the price at which the finished product, whole garlic, is resold in commercial markets, all costs related to the production, packaging, and sale of subject merchandise are already included in the price. Thus, Yuanli argues that in using its factors analysis instead of a price-to-price comparison the Department has inflated the surrogate price by adding FOP values (freight expenses, packaging costs, and financial costs, such as overhead

expenses, selling, general and administrative expenses, and profit) to the finished product price, and that any addition to this price results in double-counting.

Yuanli further argues that the Department has not gathered the data necessary to accurately and fairly select such comparison prices. Thus, Yuanli argues, if the Department continues not to use the "full production factors provided by the respondents," it must conduct further fact-finding to identify an appropriate alternative price, under the statute. Furthermore, the alternative price cannot be augmented by additional FOPs, which Yuanli argues was done in the Preliminary Results. Yuanli concludes that the Department has improperly inflated the normal value (NV) calculations in this review insofar as a surrogate value that reflects the resale price of the subject merchandise itself cannot have any further additions if it is used as NV.

Petitioners argue the IIM is not a de facto price-to-price analysis, and that Yuanli has mischaracterized the facts, as well as the Department's policy and statutory obligations. First, Petitioners note the record indicates Yuanli sold processed whole bulbs (trimmed and packaged), while garlic sold at Azadpur is raw and unprocessed. Thus, Petitioners argue, the Department is not using the merchandise as sold to the United States as a surrogate to value the intermediate input. Accordingly, the intermediate input is not reflective of merchandise subject to the antidumping duty order. Second, Petitioners argue that even if the best available information for valuing the intermediate input may be data on the value of fresh garlic, it does not mean the IIM itself is improper or that there has been double counting of costs. Petitioners state there is no evidence on the record of the 13th AR indicating that the fresh garlic sold in India, including the A and Super A garlic bulb that the Department found most similar to the fresh garlic exported by respondents to the U.S., is as processed as that produced for export in the PRC. Third, Petitioners note their foreign market research indicated the most processed form of fresh garlic, i.e. peeled garlic, is not produced and sold in India, and the fresh garlic whose value is used as an intermediate input value is subjected to less processing and packaging than Chinese garlic destined for export to the U.S. and other developed country markets, as the Department has noted in the results of prior reviews.[2]

Petitioners also argue the IIM is the most appropriate basis for NV, and particularly object to Yuanli's suggestion that NV could be calculated from reference to similar rental/operation arrangements in a surrogate country. Additionally, Petitioners argue such analysis would be contrary to the statute. Under section 773(c)(1) of the Act, the Department is required to determine NV in an non-market economy (NME) case using FOPs and surrogate values unless the Department makes a determination that the available information is inadequate, which Petitioners argue has not been made nor is one supported by the record. Next, Petitioners argue the Department's longstanding analysis leading to use of the IIM is supported under the circumstances of this review,[3] particularly by the respondent's inability to accurately record and

[2] Petitioners cite to 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) (10th AR and NSR Final Results), and accompanying Issues and Decision Memorandum at Comment 4.

[3] "Respondents in the garlic industry do not track actual labor hours incurred for growing, tending, and harvesting activities and, thus, do not maintain appropriate records which would allow them to accurately quantify, report, and substantiate this information." See Fresh Garlic from the People's Republic of China: Final Results and Partial

report critical inputs such as labor. Petitioners note the Department verified that Yuanli did not accurately record its labor input data in a verifiable fashion. See Yuanli Verification Report at 11. Thus, Petitioners argue the Department should reject Yuanli's proposed alternatives and continue to use the IIM.

Finally, Petitioners counter the argument that use of IIM in this case is effectively based on application of the exception to valuing FOPs in NME cases and contend section 773(c)(2) of the Act does not require the use of market economy selling prices as NV. Petitioners note the statute provides an alternative to establishing NV in an NME proceeding using FOPs and surrogate values, but in the rare case where available information does not permit use of any form of FOP methodology (including IIM), the Department is allowed to base NV on one or more export prices for comparable finished merchandise produced in one or more economically comparable countries. Petitioners state the IIM is consistent with section 773(c)(1)(B) of the Act and is unrelated to the alternative NV methodology. Rather, Petitioners argue, the IIM is a form of the standard method for determining NV in NME cases, i.e. by valuing FOPs. In addition, Petitioners state the Department has rejected similar arguments in previous reviews, noting that the alternative method authorized under the statute is applied only if the Department determines it is unable to apply the FOP analysis to a Respondent's overall reported data.[4]

Department's Position:

In the previous reviews and in the Preliminary Results and the IIM Memorandum[5] for this review, we found that employing the IIM to calculate NVs was appropriate and produced the most accurate antidumping calculation. Since the Preliminary Results, none of the interested parties have placed additional information on the record, or provided new arguments regarding this issue that would cause the Department to reconsider this position. Therefore, for the purposes of these final results, we are continuing to employ the IIM to calculate NVs.

The Department continues to find that the intermediate input for garlic is not the subject merchandise. The following products which are imported into the United States are subject to this AR:[6]

> all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing.

As we noted in previous garlic reviews, the raw garlic bulb which is harvested from the ground is not immediately shipped to the United States, but instead requires at least a minimum amount of

---

Rescission of the 12th Administrative Review, 73 FR 34251 (June 17, 2008) (12th AR) and accompanying Issues and Decision Memorandum at Comment 1.

[4] See 12th AR and accompanying Issues and Decision Memorandum at Comment 1.

[5] Memorandum from Scott Lindsay Re: 13th New Shipper Review of Fresh Garlic From the People's Republic of China: Intermediate Input Methodology (December 1, 2008) (IIM Memorandum).

[6] See sections 735(b)(1) and 736(a) of the Act (explaining that the antidumping order covers "imports").

processing and packing prior to export.[7] See 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) (10th Garlic Final) and accompanying Issues and Decision Memorandum at Comment 1. Thus, the intermediate input is raw garlic bulb, prior to processing, while the end product which is exported to the United States is garlic that has undergone additional processing, including trimming, peeling, and packaging. Further, we disagree that the record evidence supports the conclusion that the price for garlic sold in the Azadpur Market includes selling expenses and packaging (i.e., results in "double counting"). As stated in previous reviews, the Department has found that the intermediate input is raw garlic bulb, prior to processing, while the end product is garlic that has undergone additional processing, including trimming, peeling, and packaging. As Petitioners pointed out, there simply is no record evidence that supports the claim that garlic sold in a domestic market in India is processed, packaged and shipped in the same manner as garlic processed for export to the United States.

According to Azadpur APMC's website, the market's purpose is to safeguard the interests of wholesalers (sellers) and commission agents (buyers) by "eliminating various mal-practices like under-weightment, short payment, delayed payments, unauthorized deductions and indulgence of too many intermediaries."[8] Therefore, we find that record evidence supports the conclusion that valuing the intermediate product with a surrogate value for a whole garlic bulb, rather than respondents' reported upstream FOPs that go into producing that intermediate input, does not result in double counting.

Additionally, Yuanli itself has stated that obtaining information regarding its growing process was difficult and that said information was unreliable. Specifically, Yuanli stated that since it did not own or rent the equipment or not hire laborers and control the production process directly, it did not have "specific and document sourced information." See Section D questionnaire response (March 26, 2008) at D-3. Moreover, Yuanli indicated that because its payment to the contractor did not differentiate among the various activities of the subcontractor, Yuanli was "unable to provide specific information as to the other material input or the labor input." See Section D questionnaire response (March 26, 2008) at D-6/7.Therefore, since Yuanli has stated that the growing factors are not reliable, the Department finds that the IIM is the best available information in comparison to the unreliable information provided by Yuanli.

The Court of International Trade (CIT) recently affirmed the Department's position on this matter in Zhengzhou Harmoni Spice Co. v. United States, Slip Op. 09-39 (May 13, 2009)(Harmoni Spice), litigation arising out of the 10th AR of this antidumping duty order. The Court agreed that "Commerce properly read the statute to require use of an 'alternative valuation method' only when all respondents' information is 'inadequate' or unusable to determine normal value under" Section 773(c)(1) of the Act. Harmoni Spice at 15. Further, the Court found that

[7] For example, we have learned through the conduct of several ARs and NSRs that the garlic harvested from the ground is, at a minimum, cleaned to remove the outer skins in order to give the garlic bulb its characteristic white, fresh appearance. This whole bulb garlic is then typically packed in mesh bags and cartons for shipment to the United States. In the case of peeled garlic, the processing is more extensive and typically involves additional labor, energy, and several packing inputs (including the use of an antiseptic solution and nitrogen gas).

[8] See 12th AR and accompanying Issues and Decision Memorandum at Comment 2.

"using a short-cut to determine FOP value in certain, limited situations where the FOP data submitted are inadequate certainly falls within the broad discretion accorded Commerce under the statute." Id. at 16. In light of this interpretation of the Act, the Court then looked at the specific facts on the record of the 10th AR with regard to the inaccurate and flawed "harvest" data and concluded that the Department's reasoning was "sound." Id. at 15. In addition, the Court rejected the respondents' arguments that the intermediate input was subject to the order, finding that "the subject merchandise in the present case is not the raw bulb, but – rather—fresh garlic, which, as described above, obviously requires at least some degree of processing in order to be ready for shipment." Id. at 19. Thus, the Court concluded that Commerce "acted within its discretion in deciding to use the agency's intermediate valuation methodology" for the 10th AR of Fresh Garlic from the PRC. Id. at 20.

There are no distinguishing characteristics with regard to this particular issue from the 10th AR. As in the 10th AR, none of the respondents, including Yuanli, submitted adequate or usable growing factors information. The respondents' farmers still do not keep accurate "harvest" factor data upon which the Department can rely on the administrative record, and therefore the Department is still faced with the exact set of issues addressed by the Court in Harmoni Spice. Thus, we have continued to apply the IIM in this AR.

Comment 2: Garlic Bulb Surrogate Value

In the Preliminary Results, the Department used data from the Azadpur APMC's "Market Information Bulletin" (the Bulletin) to calculate the garlic bulb surrogate value. WAA argues that the Bulletin data is not publicly available information, and therefore, not the "best available information" under section 773(c)(1) of the Act and 19 CFR §351.408(c)(1). Further, WAA argues that the Department's use of this information to calculate the surrogate value of garlic bulb is unsupported by substantial evidence.

WAA contends that the database released at Azadpur's official website[9] is different from the information submitted by Petitioners. WAA argues that there is no report of garlic grading as grade A, B, C or Super A (SA) on Azadpur's website, even though this is the information that Petitioners have placed on the record of this review. WAA argues that in the Clarification on Surrogate Value Supplemental Questionnaire,[10] Petitioners' consultant stated that the electronic version of the Bulletin was obtained by "visiting the APMC"; and "incidentally, the Azadpur APMC website (www.apmcazadpurdelhi.com) provides summary information on garlic arrival quantity, maximum price, modal price and minimum price but as yet does not provide grade-wise information." WAA argues that this explanation is unconvincing. Further, WAA states that they have attempted to acquire the database (via phone calls and email), but have been unsuccessful. WAA contends that while the laws have no specific definition of "best available information," the fact that the information is unknown to the public and difficult to obtain makes it clear that the Department should not consider the Azadpur data as the best available.

[9] See 12th AR and accompanying Issues and Decision Memorandum at Comment 2.

[10] See Department of Commerce: Placing of Market Research Report on the Record, April 24, 2008 (NSR: 11/1/06-04/30/07).

Next, WAA argues that the Bulletin is unreliable, since the identities of the consultants that produced the Market Research on Garlic in India 2003 and the consultants who responded to the Clarifications on Surrogate Values Supplemental Questionnaire are double-bracketed. Therefore, WAA contends, the names are not revealed even under the administrative protective order (APO). WAA argues that since the consultants were hired by the interested parties, and the identities of the consultants are unrevealed under the APO, it is impossible for them to corroborate these findings. Further, WAA also asserts that the Department has accepted Petitioners' consultant's statements without any supporting, authoritative documentation. Therefore, WAA contends, "to refrain from one side of the parties dominating or possibly dominating the procedure, the Department needs other supporting or authoritative evidence from neutral and authoritative source(s) to validate its decision that Azadpur APMC's Bulletin is the best available information" when determining the correct garlic bulb input value.

WAA notes that in their surrogate value submission, they provided internet-based market information sponsored by the Indian Agricultural Marketing Information System (AGMARKNET) under the Department of Agriculture & Cooperation, Ministry of Agriculture. (http://www.agmeknet.nic.in). WAA argues that this system "provides nationwide market information for wholesale produce and enjoys wide market coverage." WAA contends that the AGMARKNET system, similar to the Azadpur market, reports prices at three levels: (1) minimum; (2) maximum; and (3) modal prices. WAA argues that although the AGMARKNET system does not have size-wise grading, the price ranges are reported based on the normal trading practices in the markets, and the information is publicly accessible through the internet. WAA contends that the three-level prices reflect general commercial conditions of garlic bulbs, including garlic size and the number of cloves. WAA argues that the price reporting system in markets customarily is not based on garlic sizes only, rather, a combination of many factors. WAA claims that the Department scarifies the standard of "best available information" on the account of size-specific information, which is contradictory to the law and the Department's practice. WAA states that the since the AGMARKNET and Azadpur APMC on-line systems both provide the best available information for the surrogate value of garlic bulb, it is necessary for the Department to change from current size-specific approach to more a comprehensive approach to the selection of the surrogate value.

WAA argues that in past reviews of this proceeding, the Department has determined that the price at which garlic is sold is mainly dependent upon two physical characteristics: (1) garlic bulb size; and (2) the number of cloves.[11] However, WAA contends, the Department's current method relies on the size of the garlic as the sole criterion in selecting surrogate value. WAA claims that this approach neglects the many other characteristics of agricultural products. WAA argues that in the agricultural industry, the production is heavily affected by the natural endowments of land, soil and climates; labors' growing skills, traditions and experiences; and the prices of the importation of same or similar products. WAA states that compared to India, the PRC has much higher garlic production and lower prices. Further, indigenous Indian garlic tends to be smaller than PRC garlic, with bulbs between 10-40 mm, while PRC garlic typically ranges between 40 - 60 mm. WAA also states that, in India, around 60 percent of the garlic production

[11] See 9th Administrative Review Final Results, 70 FR 34082 (June 13, 2005), and accompanying Issues and Decision Memorandum, (9th AR Final Results) at Comment 2; see also 10th AR and NSR Final Results, and accompanying Issues and Decision Memorandum at Comment 2.

has bulb diameter 40 mm and below.[12] WAA contends that the lower garlic production and scarcity of large-bulb garlic in India result in higher prices in India than in China. WAA argues that the Department is overly reliant on the size of Indian garlic bulb in examining potential surrogate value information, which they contend is a biased standard.

In addition, WAA argues that the Department's decision to select the Azadpur data as the surrogate value for garlic bulbs is contradictory to its own practice of selecting product-specific surrogate values, because the price of a garlic bulb is influenced by factors other than size. WAA contends that when the Department uses only a size-wise standard, it narrows the meaning of "product-specific," and opens the door to the manipulation of information further. The agricultural industry is different from most of other industries in that local factors play an important role in the production, so WAA argues, it is hard to have "size to size" comparison. WAA concludes that size-specific does not mean product-specific, and a more comprehensive approach would be more truthful to the Department's practice with respect to product-specificity.

Lastly, WAA argues there is no evidence to support the Department's conclusion in the Surrogate Value Memo that "the Department has found that garlic bulb sizes that range from 55 mm and above are Grade Super-A and garlic bulb sizes that range between 40 mm and 50 mm are Grade A and Grade Super A."[13] WAA contends that the Clarifications on Garlic Research Study submitted by Petitioners, provides very vague language to support the Department's finding.[14]

Yuanli argues that the Department must reject the surrogate value it relied upon for the garlic bulb "input," identified as the intermediate factor, in the Preliminary Results because it derives from a single, unrepresentative source. In particular, Yuanli argues that the prices for the garlic derived from the Azadpur are not appropriate because they relate to a product that is not commercially similar to the PRC garlic under review, the prices are not publicly available or generally applicable, are not market based or commercially reasonable, and are not at the same level of trade as Yuanli's theoretical purchase of garlic bulbs in its operations.

First, Yuanli contends the Department should use generally available Indian import statistics for garlic instead of non-public and localized Azadpur prices. Yuanli states that the Department has relied on Indian import statistics to provide the surrogate value for Chinese production factors, when such information is available, in the "vast majority of Chinese NME dumping cases for many years." Yuanli notes that, as authorized under Section 773(c) of the Act, the Department chooses India as the primary surrogate country for most commodities, including agricultural products like garlic. Yuanli also argues that 19 C.F.R. §351.408(c)(1) of the Department's

[12] See Placing of Market Research Report on the Record at 17.

[13] See Preliminary Results of the 13th Administrative Review and New Shipper Review of Fresh Garlic from the People's Republic of China: Surrogate Values, at 3.

[14] "Super A not only had a large bulb size but were also distinctive in tens of other features, such as appearance, color of skin, number of cloves, etc. – the tenn 'Super A' was coined by the trade to distinguish them from 'A' which was the then-prevailing terminology for large bulbed garlic." and "Both 'A' and 'Super A' have bulb size above 40 mm. We are confident in saying, however, that garlic with bulb sizes above 50 mm would *most likely* be one of newer colonal varieties classified as 'Super A', and bulb sizes above 55mm would *invariably* be one of the newer clonal varieties classified as 'Super A'."

regulations requires a strong preference for publicly available information to value FOPs. Yuanli argues this requirement is most accurately and readily satisfied by reference to Indian import statistics because the Indian Ministry of Commerce and Industry's "Monthly Statistics of the Foreign Trade of India" ("Monthly Statistics," referred to in the Preliminary Surrogate Value memorandum as "WTA Data") is a widely acceptable and available source that is transparent, comprehensive, broad-based, and credible.

Yuanli notes that, in this case, the Department has stated that it will rely on the Monthly Statistics for all surrogate values except garlic bulbs, for which it will instead use Azadpur prices. Yuanli argues this practice is not acceptable and should not be followed for these final results. Yuanli further argues that, in contrast to the public, verified, and universally applicable Monthly Statistics, the Azadpur prices are: (i) non-public and nontransparent because the Azadpur price lists do not show size breakdowns and the figures preliminarily adopted by the Department were provided privately by unnamed petitioner consultants, and so cannot be independently confirmed or verified, and (ii) narrowly applicable because they relate to only one market in one region of India. Yuanli argues that Petitioners have pressed the use of Azadpur prices because they are non-representative, non-transparent, non-public, and uncharacteristically high. As an example, Yuanli refers to the experience of another Chinese exporter (Shanghai LJ) in its most recent reviews.[15] Yuanli further contends that Petitioners lobbied the Department to abandon the import price reference and fed the Department the Azadpur data, since it is not otherwise publicly available. Therefore, Yuanli urges the Department to return to its "normal, prior procedure" and select garlic bulb prices on the same basis as all other surrogate value inputs in this case, that is, from the import data contained in the Monthly Statistics.

Yuanli also argues that Azadpur, a single local market in a single area of India, is not an appropriate source of surrogate value of garlic bulb. Yuanli states that the Preliminary Results do not discuss the reasoning behind the conclusion that the Azadpur market is the chosen surrogate value source, but rather merely conclude, without comment or explanation, "that data from the Azadpur APMC's 'Market Information Bulletin' is the most appropriate information available to value the respondents' garlic bulb input." See Yuanli Case Brief at 10, citing Preliminary Results at 74468. Yuanli further states the Preliminary Results do not mention Yuanli's detailed objections to this methodology, submitted in its Surrogate Value Comments, nor try to justify or explain its decision. However, Yuanli contends, the Department cites "apparently approvingly, Petitioners' October 16, 2009 surrogate value submission. Thus, we can only assume that the Department has applied the reasoning of the most recently completed review, in which the Department made the identical selection at the petitioners' urging."[16]

Yuanli argues that, contrary to the implication in the previous AR that used the Azadpur prices that the Azadpur bulletin "reports" market prices are independently observed in a competitive

[15] "As explained in Yuanli's October 16, 2008 submission, the Department's change from import prices to the Azadpur prices was the evident cause of the sharp increase in Shanghai LJ's dumping margin from zero percent in its initial review to over 31 percent in its subsequent review (the 12th administrative review). During that same period Shanghai LJ's U.S. prices actually increased by 25 percent, and its production factors remained identical. See Yuanli Surrogate Value Comments (October 16, 2008) at 6-8." Yuanli Case Brief at 8.

[16] See Yuanli Case Brief at 10, citing to the 12th AR, 73 FR at 34252, and accompanying Issues and Decision Memorandum at 14-24.

market, the Azadpur market is in fact a government-controlled entity with strict price controls, with a primary aim to maximize the prices of domestic producers, regardless of market realities. Indeed, Yuanli argues, the Azadpur market stifles competition by erecting serious barriers to entry and enjoys essentially monopolistic power over prices and supplies because it alone is permitted to process sales. Thus, Yuanli argues, the Azadpur prices are much higher than the prevailing free-market prices, as reflected in import statistics, and cannot be considered appropriate for establishing a reasonable surrogate value. As support, Yuanli refers to a study of the Indian agricultural industry by International Projects Partnership Consultants, France for the Asian Development Bank, called INDIA: Agribusiness and Commercial Agriculture Assessment, Final Report (May 2004)(Agribusiness Report), which Yuanli argues, "makes it absolutely clear that the Azadpur market is a government-controlled, non-competitive environment – and results in exactly the opposite of the kind of market-based prices the Department should seek in establishing a surrogate value." Therefore, Yuanli contends there is no free competition in the Azadpur market for garlic,[17] that Azadpur market prices are not based on market forces or set by supply and demand, and that market forces do not set the prices of garlic in India, as demonstrated by the 50 percent increase in garlic prices in the current POR over that in the previous POR.[18]

In addition, Yuanli argues that if the Department uses the domestic prices in India, the costs and profits of intermediaries (as identified in the Agribusiness Report) must be deducted from such prices.[19] Moreover, Yuanli contends that the Azadpur prices preliminarily used by the Department exaggerate the surrogate value for garlic bulbs and include the costs and mark-up of the trader and commission agent,[20] which does not reflect Yuanli's "actual experience." In addition, Yuanli contends that certain statutory charges add to the observed price for garlic in the

[17] For instance, Yuanli states for "notified" products, including garlic, "the APMA makes it mandatory that it be transacted in the regulated market in effect granting monopoly of marketing to the regulated markets," and notes that "(l)icensed traders have functioned to prevent new entrants. Such entry barriers have led market participants to fix their charges without being checked by competition." Agribusiness Report at para. 3.3. See also Agribusiness Report at para. 3.38 ("Agricultural produce marketing is subject to State level APMC Acts. . . . This Act regulates marketing of 'Notified Agricultural Produce {including garlic},' including the operation of wholesale markets and compulsory sale of produce through these markets.") and Agribusiness Report at para. 3.40 ("The principle behind this heavy government involvement in agricultural marketing is the premise that government needs to protect farmers.").

[18] See Agribusiness Report at para. 3.52 ("In India the development of marketing systems for agricultural and allied products has been focused around protecting the farmers from the vagaries of market forces rather than to preparing them to adjust production and supplies to benefit from market driven forces.") and Agribusiness Report at para. 3.61 ("For example, large quantities of top quality produce which do not reach the set minimum prices are taken out of the market and destroyed and is not even allowed to be sold to the processing industry to prevent distortion of the market.").

[19] The Agribusiness Report notes that "(t)here are about 4 to 6 intermediaries between the grower and the consumer. Fruit and vegetables tend to have more intermediaries than field crops. A typical value chain includes the following: Grower (producer), Trader (pucca arthiya), Commission agent (kutcha arthiya), Wholesaler (processor), Retailer Consumer." Agribusiness Report at para. 4.1.

[20] "Marketing margins in India are higher than in countries with developed marketing systems. In India, wholesaler and retail margins are each 15-20% compared to 2-3% and 3-4% in wholesaling and retailing respectively in the U.S. (CII, 1997). As a result, farmers receive a higher share of the retail price in the U.S. than in India." Agribusiness Report at para. 4.10.

Azadpur market,[21] and constitute a "distortion not considered by the Department in its adoption of Azadpur prices, since it did not reduce the market prices by these amounts." Yuanli further argues it is likely that the cloned hybrid seeds used to produce the surrogate product adopted by the Department, i.e. Super A and A garlic, are subject to complete control by the Indian government,[22] and it appears that the government not only controls seed technology and pricing, but that market-pricing is not expected until the future.[23]

Yuanli states it is not reasonable for the Department to use Azadpur market prices due to the monopolization of the market process in India, since it is estimated that prices of domestically produced products like garlic are 25-30 percent higher than they should be,[24] and due to the subsidies that exist in the Indian agricultural market, including subsidies for fertilizer, electricity, and water; transportation; and other inputs.[25] However, Yuanli argues, if the Department continues to use Azadpur market prices, they should be reduced to account for (i) monopolization of the market process (25-30 percent); (ii) taxes and fees paid (another 12-18 percent); and (iii) costs and profits associated with the middlemen between the grower and wholesaler/processor (15-20 percent at the wholesale and at the retail level).

Yuanli also argues the Azadpur prices involve very different quantities of garlic and are at an advanced level of trade, with a significant amount of downstream expense included in the observed price. Yuanli states that if it were buying garlic bulbs as a production input for its operations, it would buy from a local producer in very large, commercial quantities, given its large production volume (over 160,000 kg) during the POR. Yuanli states it "clearly would buy by the truckload, not by the bag, and would certainly buy direct from a local producer, not from a distant market." By contrast, Yuanli argues, the garlic available at the Azadpur market is far removed from the producer, as it will have gone from the grower/producer through a trader, to a commission agent, to a wholesaler before being offered for sale at the observed Azadpur prices, as described in the Agribusiness Report. Yuanli also cites the Agribusiness Report in arguing that each of these levels will have added a significant percentage to the price, likely amounting to 50 percent of the price. Yuanli states this increase in price resulting from a more "advanced" level of trade would be completely irrelevant to a company that would be purchasing directly from the producer, e.g. Yuanli.

Moreover, Yuanli argues, the quantities involved at the Azadpur market are entirely different. Whereas the Azadpur market garlic is sold in 40 kg bags, Yuanli argues that the surrogate price

[21] "Statutory charges in the form of various market fees and taxes account for 12 to 18% of the gross marketing margins (Acharya, 2001)." Agribusiness Report at para. 4.11.

[22] See Agribusiness Report at para. 5.10 ("The Seeds Act, 1966 and the Seeds Control Order and the New Policy on Seeds Development, 1988, form the basis of promotion and regulation of the Seed industry.")

[23] See Agribusiness Report at para. 5.12 ("At the same time, private and Public Sector Seed Organisations at both Central and State levels, will be expected to adopt economic pricing policies which would seek to realize the true cost of production.")

[24] Yuanli refers to sources in a national Indian newspaper indicating that competition would eliminate the control exercised by wholesalers and commission agents ("The prices would be cheaper by 25 to 30 per cent than regular markets and it would benefit both growers and consumers.") The Hindu, January 8, 2004.

[25] See description in Yuanli's Surrogate Value comments at 20-23. Yuanli states that pervasively subsidized domestic garlic prices in India cannot be used for the same reasons that the Department disfavors surrogate values from Indonesia and Thailand.

should be a bulk price (e.g., an import price) because Yuanli would buy in bulk,. Yuanli contends the Department is "well aware that bulk sales will involve much lower prices than sales in small bagged quantities." Yuanli adds that, apart from the price differences inherent in sales quantities of 40 kilograms versus several thousand kilograms, the Azadpur product also involves various market expenses, such as packing, transport, market fees, etc., which should be irrelevant to an appropriate surrogate value. Thus, Yuanli states the Department should instead use the only public data available in the correct quantities and level of trade, which is Indian import data, from the Monthly Statistics.

Yuanli concludes by requesting that the Department reopen the record if necessary to request from Yuanli any additional information required for the Department to conduct a full and fair factors analysis of Yuanli's "actual growing factors" for the Final Results. Alternatively, Yuanli requests that appropriate surrogate values from the published Indian Monthly Statistics of imports be used in the Final Results to value any intermediate factors adopted, and states that the Department routinely accesses readily available information from the Monthly Statistics. See Yuanli Case Brief at 21.[26]

Petitioners state information on the record indicates that Azadpur APMC prices are appropriate, publicly available information. First, Petitioners note the credibility of the Azadpur APMC market bulletins has not been substantively challenged, as Yuanli has failed to submit anything that raises serious questions regarding the basic accuracy and credibility of the market bulletins (despite having the opportunity to submit factual information to rebut, clarify and correct factual information placed on the public record by other parties.) See 19 CFR 351.301(c)(1). Petitioners argue Yuanli provides no supporting evidence for claiming that the bulletins are non-public and do not show size breakdowns. Rather, Petitioners counter, the opposite is true in that these bulletins have been recognized in prior reviews as providing size-specific, publicly available data.[27] Moreover, Petitioners argue, the Azadpur APMC data are publicly available to any person who retrieves them and using data from a source of this type is consistent with the Department's position regarding the use of financial statements from privately-held Indian companies.[28] Petitioners contend pricing data that can readily be obtained from the Azadpur APMC are in the public realm, even if they are not available on the market's Internet site.

Second, Petitioners argue the Azadpur prices are not subsidized or subject to monopoly power, and should be used with no downward adjustment. Petitioners counter Yuanli's argument that import statistics reflect that Azadpur prices are higher than free-market prices and state there is no evidence that the products in the Azadpur APMC market bulletin are comparable to the commingled products represented by import statistics. Rather, Petitioners argue, the Azadpur prices are set forth according to detailed information regarding size, grade, and geographic origin, which makes their use as surrogates superior to the use of general import statistics.

[26] Yuanli notes that import information placed on the record by Anqiu Haoshun Trade Co., Ltd. in the new shipper review (see Surrogate Value Comments of Anqiu Haoshun Trade Co., Ltd. (September 16, 2008)).

[27] See 12th AR and accompanying Issues and Decision Memorandum at Comment 2-A.

[28] See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079 (September 8, 2006) and accompanying Issues and Decision Memorandum at Comment 1 ("financial statements of private companies filed with the Indian Registrar of Companies are in the public realm").

In addition, Petitioners contend that, despite the selective nature of Yuanli's citation to the Agribusiness Report, the existence of Indian laws and regulations governing agricultural markets do not mean that Azadpur APMC prices are not market prices. Rather, Petitioners state, the Agribusiness Report notes that fairness and transparency of pricing are the objectives of the regulatory systems. See Yuanli Surrogate Value Submission at Ex. SV-1, paragraph 3.2. Petitioners note that the Agribusiness Report criticizes the marketing structures themselves as "a barrier to modern marketing systems" for charging marketing fees, but it does not support a finding that actual prices in imperfect marketing systems are not market prices. Thus, Petitioners argue, although the marketing systems in place may be cumbersome, that does not mean the prices resulting from that system are not market prices. Moreover, Petitioners contend that Azadpur APMC prices might be higher if the advocated reforms were implemented, citing to the Agribusiness Report as support.

Petitioners also argue it is appropriate to include (or to not deduct where included) operating costs and fees associated with bringing a product to market, to the extent they exist, because they represent the market realities of the surrogate country. Moreover, even if the Department were to consider adjusting the market prices for such fees, Petitioners argue the only intermediaries potentially at issue are the "trader" and the "commission agent," i.e. those parties listed in the alleged distribution chain as falling between the "grower" and the "processor." However, Petitioners contend there is no evidence that the Azadpur APMC prices include hidden taxes or fees, as implied by Yuanli.

Third, Petitioners argue Azadpur APMC prices are not at an inappropriate level of trade and there is no support for imputing involvement of any middleman or significant expenses at the Azadpur APMC market. Petitioners state that import values are not adjusted as Yuanli suggests. Azadpur APMC prices should be adjusted, but rather the imported input's price at the port (including any charges or expenses associated with bringing it to the port) is considered the market price and used as the surrogate value. Petitioners argue the same logic applies to Azadpur APMC prices for garlic bulbs and thus no adjustment is necessary.

Likewise, the Department must reject the alleged incomparability of Azadpur prices for raw garlic based on Yuanli's argument that it would purchase raw garlic in much larger quantities. Petitioners argue that this would introduce a standard that does not exist in the law or in Department precedent. Petitioners contend that the mere use of a particular unit to provide per unit pricing or values provides no information on actual transaction quantities and there is no basis for assuming that such quantities are in quantities of one 40 kg sack, simply because prices are quoted on a per-sack basis. Petitioners note that import statistics are typically quoted on a per kilogram or other per unit basis, but that does not mean the goods being quoted are traded in lots of one kilogram, or whatever unit of measure is used (e.g. steel prices may be quoted per hundredweight even for transactions involving multiple coils weighing many tons).

Moreover, even if the Department assumed that transactions occurred in 40 kg lots, Petitioners argue there is no precedent for introducing a "comparable quantity" component to the surrogate value equation. Petitioners note the Department's established practice is to consider the quality, specificity, and contemporaneity of publicly available data values when selecting the best

surrogate values, but "comparable quantities" is not part of the analysis. Petitioners contend Yuanli's attempt to introduce this factor would turn the Department's practice on its head by creating a new criterion and placing it ahead of product specificity in the hierarchy of analysis. Petitioners argue the volume of a WAA's sales of garlic has no bearing on the propriety of one surrogate value over another and should not trump product comparability; the surrogate value selection should be the same regardless of how much garlic a company sold. Petitioners further argue the irrelevance of the fact that Azadpur APMC reports its prices in units of 40 kg sacks. Petitioners state that even if sales were in container-load quantities and with volume discounts, it does not mean that the prices are not based on smaller units of measure. Petitioners conclude that garlic is not sold one sack at a time in any wholesale market, including in the Azadpur APMC.

Lastly, Petitioners argue that Respondents suggestion that AGMARKNET information is superior because it is internet-based is flawed, because even the Respondents have acknowledged that these prices are not size or grade specific. Further, Petitioners argue that Respondents sales documentation does not support the claim that prices are not based on size.[29] Petitioners also contend that Respondents have argued that garlic in China is in the 40 to 60 mm range while the majority of Indian garlic is 40 mm and below. Therefore, Petitioners conclude, contrary to Respondents' reasoning, size-based values are appropriate and critical to determining the fair value benchmark.

Department's Position:

Consistent with our finding in previous reviews, we find the Azadpur prices to be the best available information to value the garlic bulb input (the intermediate product), because it is specific to the product in question, represents a broad market average, is publicly available, and is tax and duty exclusive. Moreover, we note that the Indian import data for garlic are not on the record of this review.

The Department's practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, surrogate values which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POR and exclusive of taxes and duties.[30] The Department undertakes its analysis of valuing the FOPs on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry.[31] There is no hierarchy for applying the above-stated principles. Thus, the Department must weigh available information with respect to

[29] See, e.g., Weifang Shennong Section A Questionnaire Response, at Exhibit A-11.

[30] See 12th AR at Comment 2; Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the Eleventh Administrative Review and New Shipper Reviews, 72 FR 34438 (June 22, 2007) (11th Garlic Final) and accompanying Issues and Decision Memorandum at Comment 2; and 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.

[31] See Glycine from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 70 FR 47176 (August 12, 2005), and accompanying Issues and Decision Memorandum at Comment 1.

each input value and make a product-specific and case-specific decision as to what the "best" surrogate value is for each input.[32]

A. Product Specificity

In the Preliminary Results, we used prices for Grade A and Super A garlic to value Respondent's garlic bulb input. The Bulletin is published by the Azadpur on each trading day and contains, among other things, a list of all fruits and vegetables sold on the previous trading day, the amount (by weight) of each fruit or vegetable sold on that day and a low, high and modal price for each commodity sold. The Department has concluded for the last several reviews that the vast majority of the evidence indicates that size of the garlic bulbs is given significant value in the marketplace.[33] Just as important, despite Respondent's allegations to the contrary, there is no evidence on the record to undermine this price-determinative conclusion. We agree that labor hours, yield factors, and other such harvest/growing factors are important, and for this reason, the Department has concluded it necessary to use an IIM in the first place, because the Respondent's farms do not currently account for these factors in their books and records. See IIM Memorandum. However, the only factors the Department has ever found in the garlic review to noticeably influence price has been the size of a garlic bulb or number of cloves, with possibly one recent exception for a specialty garlic variety (single bulb garlic).[34] Thus, in this review, the Department determined it is important to use surrogate Indian garlic values reflecting sales of garlic bulbs of similar diameter to that of the Respondent's merchandise during the POR. While Yuanli has argued that the Department should value the garlic bulb using data from India's Monthly Statistics, this information is not on the record of this proceeding and thus the Department has not considered it for the final results.

In the most recently completed AR and in the Preliminary Results of the instant review, we explained that we found the information contained in the Bulletin to be the most specific to the input in question because it provides a surrogate value based on bulb size, a proven price-determinative factor. No new evidence has been placed on the record that would cause the Department to reconsider this position.

With regard to Yuanli's arguments concerning the Agribusiness Report, the Department finds that the existence of Indian laws and regulations governing agricultural markets does not mean that Azadpur APMC prices are not market prices. Generally, any governmental interference in a market creates inefficiencies that inherently affect the prices in that market. However, because every market must operate in accordance with the laws of the country within which it is located, there will always be some degree of regulatory interference at play on market forces. In addition, as Petitioners point out, the Agribusiness Report specifically notes that fairness and transparency of pricing are the objectives of these regulatory systems. See Agribusiness Report at paragraph 3.2. Further, the Department notes that while the Agribusiness Report criticizes the

[32] See Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review, 67 FR 19546 (April 22, 2002) and accompanying Issues and Decision Memorandum.

[33] See, e.g., 12th AR at Comment 2 and 11th Garlic Final at Comment 2.A.

[34] See Fresh Garlic From the People's Republic of China: Preliminary Results of New Shipper Reviews, 74 FR 20452 (May 4, 2009).

marketing structures themselves for charging marketing fees, and allowing licensed traders monopolistic control of marketing to the regulated markets, it does not support a finding that actual prices paid by consumers in the Azadpur Markets are not, nonetheless, market prices. Most market economies are regulated by their government to a certain extent, but this does not undermine the commercial nature of all prices paid for by consumers in that market. Thus absent any record evidence that the Azadpur prices are not viable market prices, the Department continues to find that the Azadpur prices are the best available information for the intermediate input on the record of this review.

Moreover, Yuanli's argument that the Azadpur APMC market prices are unrepresentative in that the Indian prices are not comparable to the "bulk prices" a large producer like Yuanli would seek is not supported by information on the record. Contrary to Yuanli's claim that it purchases garlic in container quantities and bulk quantities, the quantity of garlic that Yuanli purchased, processed and exported to the United States was significantly less than a container load. Moreover, we note that several tons of garlic are sold at Azadpur each day, which are packed in 40 kg sacks and there is no record evidence concerning the size of individual garlic sales at Azadpur, i.e., whether the garlic is sold on a sack-by-sack basis, on an individual farmer basis, or in lots which could weigh several tons.

In addition, as noted above, it is the Department's practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, to select, to the extent practicable, surrogate values which are representative of a broad market average, publicly available, product-specific, contemporaneous with the POR and tax-and duty-exclusive. Yuanli essentially argues that the Department is required to tailor its choice of surrogate value to each respondent's own exact production and shipping experience. We disagree that such an exercise would be appropriate, absent unusual circumstances. Surrogate values are by their nature general, and do not exactly mirror the experience of reviewed companies in a nonmarket economy.

As the CIT recently held in Longkou Haimeng Machinery Co. v. United States, the Department need not "duplicate the exact production experience of the NME manufacturers at the expense of choosing a surrogate value that most accurately represents the fair market value of subject merchandise in a hypothetical market economy China." Longkou Haimeng Machinery Co. v. United States, Slip Op. 09-46 (CIT May 18, 2009)(citing Nation Ford Chem. Co. v. United States, 166 F.3d 1373, 1377 (Fed. Cir. 1990)). The adjustments demanded by Yuanli would seek to duplicate the respondents' production experience at the expense of the use of a value that is the best available information on the record. Therefore, the Department will not make such adjustments to its surrogate value calculation.

B. Broad Market Average

We find that data from the Bulletin represent a broad market average. In past cases, we have found official government publications to be reliable and credible sources of information.[35] We note that each Bulletin states that Azadpur is an autonomous body of the government of the

[35] See 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 1.

National Capital Territory (NCT) of Delhi. We also note that Azadpur is the largest fruit and vegetable market in Asia and has become a "National Distribution Centre" for important Indian agricultural products, such as garlic.[36] Because the Azadpur APMC Bulletin is published by NCT, an Indian government entity, we find the Bulletin to be a reliable source of information for surrogate values. Therefore, we find Azadpur APMC's claim to be India's agricultural "National Distribution Centre" and its claim to be the largest agricultural market in India to be reliable and credible. Furthermore, as discussed above, because India's Monthly Statistics for garlic are not on the record of this proceeding, the Department is not considering this data source for valuing the garlic bulb input and thus has not addressed Yuanli's argument that this data is a broad market average.

When calculating surrogate values, it is the Department's practice to use country-wide data instead of regional data when the former is available, and the CIT has affirmed this practice.[37] Moreover, we attempt to find the most representative and least distortive market-based value because the more broad-based the value, the greater the likelihood that the value is representative.[38] A careful examination of the Bulletin shows that agricultural products from all over India are sold at Azadpur. Thus, we find that the Bulletin is a reliable and credible representation of a broad market average. We note that the data sets used by the Department to calculate the garlic bulb surrogate value for Grade A garlic and Grade Super A garlic represent millions of kilograms of garlic sold from seven Indian states. Finally, the Department finds that neither Yuanli nor WAA has provided any evidence demonstrating that the Azadpur data is distorted by monopolistic control of government entities. The simple fact that garlic is sold at a market set up by the government does not indicate that the government influences the prices in such a market. Thus, we find that the Bulletin is a reliable and credible representation of a broad market average.

Moreover, with respect to Yuanli's argument that the Azadpur data is at an advanced level of trade with a significant amount of downstream expense included in the cost, the Department disagrees. According to the Azadpur APMC's website, the market's purpose is to safeguard the interests of wholesalers (sellers) and commission agents (buyers) by "eliminating various mal-practices like under-weightment, short payment, delayed payments, unauthorized deductions, and indulgence of too many intermediaries." In other words, because the Azadpur APMC's website indicates that it was set up precisely to counteract the influence of intermediaries and provide a more direct channel from producer to buyer, we find that Yuanli's argument that the Azadpur price is at an inappropriate level of trade is incorrect. Therefore, we find that the Azadpur APMC data is at an appropriate level of trade because the sales chain does not include numerous actors or "intermediaries" that would result in a significant increase in the price.

[36] See Azadpur APMC's website at www.apmcazadpurdelhi.com.

[37] See Wuhan Bee Healthy Co., Ltd. v. United States, Slip Op. 05-142 (CIT 2005) at 5-6.

[38] See 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) and accompanying Issues and Decision Memorandum at Comment 5.

C. Public Availability

Based on the record of this proceeding, we find the Bulletin to be publicly available. The Azadpur data is published daily, posted in the APMC's facilities for public viewing, is electronically archived and is available upon request. We have in electronic form, approximately 295 Bulletins published for Grade A and Super A, for twelve months of the POR. While we note that the Bulletin is not readily available on the internet, it is readily available to its intended public audience, wholesalers and buyers at Azadpur in India. Moreover, the Department has reviewed the Bulletin price data and is satisfied that each day where data could have been available at the APMC, that data was submitted. Therefore, we do not find that public availability is at issue here with respect to the inaccessibility of a complete set of data.

Additionally, we also disagree with WAA's argument that the Azadpur data is not publicly available because the sources of information are treated as privileged. We note that the only double-bracketed information at issue is the personal identity of the consultants who compiled the Azadpur data. However, we note that the identity of the organization that each of the sources represents, and all other information contained in the report is public. And as noted above, the primary surrogate value source, the Azadpur data, is available upon request from the APMC. In the 12th AR and other past cases, the Department has relied on surrogate value information gathered by market researchers. Moreover, the amount of double bracketing contained in the report is consistent with past segments of this order, and our practice in general, when independent market researchers request anonymous treatment and provide an explanation for their request.[39]

Furthermore, as discussed above, because India's Monthly Statistics for garlic are not on the record of this proceeding, the Department is not considering this data source for valuing the garlic bulb input and thus has not addressed Yuanli's argument that this data is publicly available.

D. Tax and Duty Exclusive

We find the Azadpur prices to be tax and duty exclusive. In the 11th Garlic Final we found the AGMARKNET data are tax-exclusive, noting that the AGMARKNET project was conceived and implemented to provide Indian domestic farmers "nationwide market information for wholesale produce" by facilitating the collection and dissemination of market information to better price realization by the farmers," thereby eliminating regional price distortions that might exist absent such relative information.[40] The Bulletin is a subset of the AGMARKNET data used in the 11th Garlic Final to value the whole garlic bulb. As noted above, the purpose of the Azadpur APMC is to provide transparent agricultural pricing data to the public, i.e., buyers and sellers. Therefore, we find that if the AGMARKNET data is tax and duty exclusive, the underlying source data, the Azadpur APMC, must also be tax and duty exclusive. Furthermore,

[39] See Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 69 FR 33626 (June 16, 2004) (8th Garlic Final), and accompanying Issues and Decision Memorandum at Comment 1.

[40] See 11th Garlic Final and accompanying Issues and Decision Memorandum at Comment 2.

we note that there is no record evidence that the Azadpur APMC levies duties or taxes on the products sold at the APMC.

Additionally, we disagree with Petitioners that there is no record evidence that the Azadpur APMC data does not include a six percent commission and one percent market fee. Specifically, there is record evidence showing that the Azadpur APMC's prices include these fees.[41] Accordingly, for the find results, we have continued to deduct seven percent from the garlic bulb surrogate value to account for the market fees imposed by the Azadpur APMC.

We disagree with Yuanli that there are additional fees and expenses that are included within the Azadpur APMC data. The Azadpur APMC Bulletins indicate that they cover only wholesale prices of agricultural products. While it is possible that transportation and handling expenses are incurred by Indian farmers at Azadpur APMC, there is no information on the record regarding transportation, handling expenses, and any other additional fees. Accordingly, because there is no record evidence demonstrating that the Azadpur APMC data includes additional fees and expenses, we have not made a deduction to the Azadpur APMC data absent such information.

Comment 3: Surrogate Financial Ratios

In the Preliminary Results, the Department used the 2004/2005 financial statements from Limtex Tea Limited (Limtex), an Indian tea company,[42] as the basis for the surrogate financial ratios. See Preliminary Results. The parties' general arguments are summarized here. Below, there is a separate section containing the arguments for each of the specific potential surrogate financial ratio companies that have been discussed on the record of this review: Godfrey Phillips (Godfrey); ADF Foods Ltd. (ADF); Parry Agro Industrial Ltd. (Parry Agro); Tata Tea Ltd. (Tata Tea); Lakshmi Energy and Foods Limited (Lakshmi); REI Agro Limited (REI); and LT Overseas Ltd. (LT).[43]

In their case briefs, Petitioners disagree with the Department's preliminary decision that Limtex's financial statements provide an appropriate basis for calculating surrogate overhead, SG&A, and profit ratios. Petitioners argue that this decision was based on the reasoning that (1) tea processing is similar to garlic since tea is not highly processed or preserved prior to sale, and (2) because Limtex was a non-integrated producer that purchased intermediate inputs rather than growing and harvesting them. However, Petitioner argues that the two types of fresh garlic under review, "whole" and "peeled", each can require refrigerated storage for a significant period of time following harvest, with peeled garlic in particular being highly perishable. Further, Petitioners also note that Department observed that respondent companies used sophisticated, specialized garlic-peeling machinery. The use of this sophisticated machinery, Petitioners argue, rebuts the assumption that peeled garlic is not highly processed.

[41] See Azadpur APMC's website at www.apmcazadpurdelhi.com.

[42] See WAA's September 16, 2008 Surrogate Value Submission.

[43] See Petitioners' October 16, 2008 Surrogate Value Submission; see also Petitioners' January 14, 2009 Surrogate Value Submission.

WAA further states that the Department verified the production process for peeled garlic which utilizes processing equipment (i.e. clove peeler, separating machine and washing tank).[44] WAA argues that, although the processing of peeled garlic involves more equipment, it is by no means "sophisticated" machinery.

Further, Petitioners argue that in earlier segments of this case, the mix of fresh garlic shipped from the PRC was heavily weighted toward whole bulbs. However, Petitioners explain, this mix has shifted in that peeled garlic has become a more significant percentage of shipments. Petitioners contend that in 2002 peeled fresh garlic accounted for less than 5 percent of total fresh garlic imports by volume while in 2007. Petitioners argue that since PRC garlic processors have increased their shipments of peeled garlic to the United States, the Department should consider whether other Indian companies' financial data are more appropriate than Limtex for consideration as a surrogate for PRC garlic processors' financial experience.

WAA rebuts Petitioners by arguing that the increased share of peeled garlic imports in 2007 should not be the reason for selecting a higher surrogate financial ratio for the final results. WAA contends that the Department has in the past adopted two important criteria in choosing a surrogate company as the basis for financial ratios: (1) the company's comparable production experience;[45] and (2) the company's comparable merchandise.[46] WAA argues that the Department should continue to evaluate a company's information based on these two criteria. And based on these criteria, WAA contends that: (1) processing tea is more similar to processing garlic than to processing the products of the other companies that Petitioners have recommended, because tea is not highly processed or preserved prior to sale; and (2) the garlic growing and processing industries in the PRC are not integrated, and neither is Limtex's tea production. Therefore, WAA argues the Department should continue to find Limtex's 2004-2005 financial statements as the appropriate company for surrogate ratio purposes.

Petitioners argue that the 2007-2008 financial statements of Godfrey, ADF and Tata Tea are more contemporaneous than Limtex's 2004-2005 financial statements. Petitioners contend that, even though the Department does not consider contemporaneity a dispositive factor as to the suitability of a surrogate,[47] it must nevertheless be given some weight, particularly when the companies' production processes and levels of integration are comparable or superior, as they are in this case. Petitioners add that many industry sectors, such as food and food ingredients, can experience significantly different costs and profits over time, which can mean very different financial ratios from year to year.

WAA counters this argument, noting that the Department has adjusted for the time lag between the information period and the POR by applying a proper inflation index to accommodate the

---

[44] See Anqiu Friend Verification Report at Exhibit 15.

[45] "We note that in evaluating financial statements for use in calculating the surrogate financial ratios, it is the Department's preference to match the surrogate companies' production experience with Respondents' production experience." See 12th AR at Comment 3.

[46] "While the statute does not define 'comparable merchandise' in selecting surrogate values for overhead, SG&A and profit, the Department has considered whether the surrogate company's products have similar production processes, end uses, and physical characteristics as the respondents." See 11th NSR Final at Comment 2.

[47] See, e.g., 12th AR at Comment 3.

contemporaneity requirement in previous reviews. Therefore, WAA argues, because Limtex provides the best available company-specific information in the current reviews, and the contemporaneity issue can be solved by inflating or deflating the financial ratios as necessary, there is no obstacle to prevent the Department from continuing to use Limtex for surrogate financial ratios in the final results. In their rebuttal, Petitioners point out that WAA has not cited to any precedent in which the Department adjusted surrogate financial statements using inflation indices. Petitioners add that financial ratios express a relative relationship between a specific company's costs and prices opposed to macroeconomic, and therefore cannot be accurately adjusted using inflation indices.

Petitioners also contend that one of the major quantitative differences between Limtex's 2004-2005 experience and the experience of Godfrey, ADF and Tata is the profit ratios. Petitioners argue that the more contemporaneous producers have significantly higher profit ratios in comparison to Limtex's 2004 experience of less than one percent.[48] Petitioner state that the Indian economy has experienced significant growth in recent years, with many companies experience growth in their profit rates, including Godfrey.[49] Petitioner argue that there is no credible basis for considering Limtex's small profit from 2004, to be a more appropriate surrogate for PRC garlic producers' experience in a POR that is mainly in 2007. Instead, Petitioners' argue, it is far more likely that the POR-contemporaneous profit picture represents the better surrogate for fresh garlic producers' profit as a function of the business operations in the relevant period.

Petitioners conclude that in 2007-2008, Godfrey, ADF, and Tata Tea all produced comparable merchandise to garlic. Moreover, Petitioners argues that the 2007-2008 financial statements of Godfrey, ADF and Tata each provide financial data that are more contemporaneous than Limtex's 2004-2005 financial statements. Petitioners argue that Limtex's financial statements are outdated, and the company's production processes are no more comparable to those involved in the production of fresh garlic than the processes engaged in by Godfrey, ADF, or Tata Tea. Petitioners argue that in past segments when Limtex was used by the Department, it was less outdated. However, Petitioners argue, Limtex's statement is less contemporaneous, and should not be the preferred source of surrogate financial ratios. Therefore, Petitioners state, the Department should value surrogate financial ratios using a combination of the values obtained from Godfrey, ADF, and Tata Tea. Petitioners also note that in the recently issued preliminary results of the 14th NSR, covering November 1, 2007 through April 30, 2008; and November 1, 2007 through June 9, 2008, the Department departed from its Limtex-only methodology and based the financial ratios on Limtex, ADF and Tata Tea.[50]

WAA argues the Department should not use the financial statements of the following companies: Tata Tea, Godfrey Phillips, Parry Agro, ADF, LT Overseas Ltd., and REI Agro Ltd. Instead, WAA argues that the Department should continue to use Limtex's financial ratios in the final

[48] Limtex profit (3,479,717) divided by COP (514,193,858) equals 0.68 percent. See Limtex Annual Report.

[49] "The Indian economy has been stable and robust in recent times, with a distinct move towards a higher growth plan. A consistent 8.7% GDP grow rate has been supported by favourable economic indicators." See Godfrey Annual Report at 5 (Directors' Report – General Economic Environment).

[50] See Fresh Garlic from the People's Republic of China: Preliminary Results of New Shipper Reviews, 74 FR 20452 (May 4, 2009), at 22-23.

results. In addition, if the Department has reason to revise the surrogate financial ratio used in the preliminary result, WAA suggests the Department use the weighted average of the financial ratios of Limtex and Lakshmi, calculated by the total material, direct labor, and energy input of the two companies.

> 1) Tata Tea - WAA argues that despite the fact that Tata Tea produces tea, it "does not share comparable production experiences in business operations, management, and technology-intensiveness" with the PRC garlic industry. WAA points out that Tata Tea has a high profit and SG&A rates which are not in line with those of PRC garlic producers.[51] WAA also contends that Tata Tea's strength comes from its large economic scales, R&D, and investments. WAA notes that Tata Tea has subsidiaries and associated companies in India, the United States, the United Kingdom, and Sri Lanka.[52] Lastly, WAA argues that both Anqiu Friend and WFSN are significantly smaller in scope than Tata Tea. WAA adds that neither Anqiu Friend nor WFSN has any subsidiaries, R&D expenditures, or investment activities. Therefore, WAA argues, the Department should not use Tata Tea's financial ratios to calculate the surrogate financial ratios.
>
> Petitioners contend that the company engages in the marketing and distribution of tea, coffee and spices and that the Department has deemed tea processing similar to garlic processing.[53] Petitioners note that the Department has opted for Limtex's financial statements over other tea producers, including Tata Tea, on the grounds that only Limtex represented a non-integrated producer comparable to Chinese garlic processors. Petitioners argue that Tata Tea's main business activity is processing purchased tea.
>
> Based on Tata Tea's financial statements, Petitioners argue Tata purchases more than 92 percent of the tea that its processed.[54] Thus, Petitioners argue that Tata Tea is a non-integrated producer of tea. Petitioners also note that Tata Tea's financial statements: (1) specifically discusses its strategies for tea buying, including developing sustainable sourcing relationships with tea suppliers;[55] and (2) indicates that its "single largest input cost is raw tea, and very often managing the sourcing thereof is a challenge that we face in our business."[56]
>
> Petitioners noted that Tata Tea's main product is "black tea" which represents nearly 98 percent of its tea production.[5758] Thus, similar to the production experience of WAA, Tata Tea processes intermediate agricultural inputs and packing materials into an end

[51] See Tata Tea Annual Report, at Calculation of Surrogate Financial Ratios.

[52] See Tata Tea Annual Report, at pages 13 and 14.

[53] See, e.g., Fresh Garlic from the People's Republic of China: Final Results and Rescission, In Part, of Twelfth New Shipper Reviews, 73 FR 56550 (September 29, 2008) (12th NSR Final Results) at Comment 3.

[54] 70.45 kgs in lacs (from own estate) divided by 975.66 kgs lacs (total tea consumed) equals 7.2 percent. See Tata Tea Annual Report, at Schedule 22.

[55] See id.

[56] See id.

[57] See id. at 11.

[58] See id. at 70.

product. Tata Tea's integration level is highly comparable to that of fresh garlic processors, and the end product, mainly black tea, is highly comparable to garlic.

Regarding WAA's arguments regarding Tata Tea (i.e., high profit rate and having subsidiaries and associated companies), Petitioners state that the surrogate methodology is "an exercise in surrogacy to determine how a Chinese company would operate in a market economy environment." Petitioners state the fact that a Chinese company might have different corporate structure than an Indian company does not disqualify the Indian company as suitable surrogate.

Moreover, Petitioners maintain that WAA's claim that a particular financial ratio is unacceptable because the surrogate company has subsidiaries or high profitability is inconsistent with the methodology applied by the Department when selecting sources of surrogate ratios. Petitioners state that pursuant to Section 773(c) of the Act the Department is required to determine normal value on the basis of factors of production valued using appropriate surrogate values "to which shall be added an amount for general expenses and profit plus the cost of containers, coverings, and other expense." Petitioners add that Section 773 (c)(4) of the Act requires the Department "'to utilize the prices or costs of factors of production in one or more market economy countries' that are at a level of comparable economic development, and 'significant producers of comparable merchandise.'" Petitioners also note to the Departments has stated:"While the statute does not define "comparable merchandise," in selecting surrogate values for overhead, SG&A and profit, the Department has considered *whether the products have similar production processes, end uses, and physical characteristics*."[59] Petitioners state that an analysis where products have similar production, end uses and physical characteristics, does not consider whether the level of profits, SG&A or overhead of the company nor does it consider whether the company's corporate structure is similar to that of the company under review/investigation. Thus, Petitioners argue that a company's profitability of corporate structure should not control the analysis.

2) Godfrey - WAA argues the company has diversified businesses including tea processing, confectionary, cosmetics and retail sales. WAA argues that the majority of Godfrey's cash flow originates from investment and financing activities and that Godfrey's director holds directorships in various financial industries: WAA argues that despite the similarities in the production process between cigarettes and peeled garlic, Godfrey's sophistication makes the company's experience significantly different than Anqiu Friend or WFSN.

Petitioners argue that the Godfrey's production operations include the processing of tea, cut tobacco and cigarettes. Petitioners also contend that the production of fresh garlic, tobacco leaves, and tea leaves are reasonably comparable in terms of complexity, duration, and the sophistication of processing equipment used. Therefore, Petitioners argue, Godfrey's production activities are similar to garlic production, since both involve

[59] 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 Issues and Decision Memorandum at Comment 2 (Production of Comparable Merchandise for Surrogate Financial Ratios) (emphasis added by Petitioners).

processes by which intermediate inputs are further processed and then sold. Petitioners also note that Godfrey produced commercially significant amounts of both unmanufactured tobacco and finished tobacco products (i.e., cigarettes and cigars).[60] Petitioners argue that these two classes of products are, respectively, analogous to the two main types of garlic at issue, whole garlic bulbs and peeled garlic.

Moreover, Petitioners contend that Godfrey is not an integrated producer in that it purchases unmanufactured tobacco and packaging materials to process into finished products.[61] Thus, like production of fresh garlic, the production of tobacco products involves the processing of an intermediate agricultural input and packing materials into a finished product. Petitioners add that Godfrey's integration level is highly comparable to that of fresh garlic processors, for which garlic bulbs and packaging materials being the significant inputs.

Petitioners argue that depreciation costs are low for tea and tobacco processing. Petitioners argue that there is little support for the Department's previous findings that garlic processing more closely resembles tea processing than it does tobacco processing. Petitioners contend that both Godfrey and Limtex had depreciation costs that were a relatively low percentage of all their costs. Specifically, Petitioners contend that Godfrey's after-tax revenue for all segments (i.e., cigarette and tobacco and tea and other retail) represents only 2.5 percent of the cost of production (COP).[62] Petitioners argue that this figure is comparable to Limtex's depreciation of about 1.0 percent of COP.[63] Petitioners argue that in neither case do these depreciation ratios indicate that the plant and equipment involved could not reasonably be considered comparable to those of garlic processing operations.

3) ADF - WAA argues that ADF has very high SG&A and overhead rates. WAA argues that the Department found in the previous review, that high SG&A and overhead would result in inaccurate margin calculations.[64]

Petitioners argue that WAA's criticism of ADF hinges on the contention that the overhead ratio is very high. Petitioners argue that this is not a fact the Department should consider "unless, for example, it is considered indirectly as a reflection of differences in production process, product mix, or the like." Petitioners argue that WAA's characterization is not a valid basis for ruling out ADF as a surrogate. Petitioners

[60] See, e.g., Godfrey Annual Report, at Schedule 16, Note 17-II.

[61] See id. at Schedule 16 (Note 17-III).

[62] After-tax revenue (Rs. 95,465 lacs) minus pre-tax profit (Rs. 16,973.76 lacs (17,334.51 minus 360.75)) equals COP (Rs. 78,491 lacs (95,465 minus 16,974)). Depreciation (Rs. 1,977.49 lacs) divided by COP (Rs. 78,491 lacs) equals depreciation percent of COP (2.5 percent). See id. at Schedule 16 (Note 12).

[63] Limtex's depreciation was Rs. 4,909,359 and COP was Rs. 514,193,858. See Limtex Annual Report at page 13.

[64] "Godfrey's extremely high overhead and SG&A ratio indicate that its production, sales and administrative functions are much more complex than those of a garlic or tea company, and would not result in an accurate antidumping margin calculation." See 12th AR and accompanying Issues and Decision Memorandum at Comment 3.

conclude that the Department should reject Limtex's financial statements and use more accurate and contemporaneous financial statements as argued in their briefs.

Petitioners argue that ADF's processed products are similar to garlic processing.[65] Petitioners argue that both fruit/vegetable processing and garlic processing involve processes by which intermediate inputs (i.e., fresh garlic bulbs, fruits/vegetables) are further processed and then sold. Petitioners contend that frozen foods and individually quick frozen products suggest infrastructure investments; the same can be said for the production lines necessary to pack the fresh peeled garlic as well as the refrigerated warehouses and transportation necessary for garlic processors. Petitioners argue that peeling and packing fresh peeled garlic is similar to the canning and packaging operations of ADF.

Further, Petitioners argue that ADF is not an integrated producer. ADF's financial statements indicate that the main inputs to its products are mango, lemon, chili vegetables, whole chili, tamarind, salt, sugar & other ingredients, and packing materials.[66] Thus, like garlic, the production of ADF's products involves the processing of intermediate agricultural inputs and packing materials into an end product. Petitioner argues ADF's integration level is highly comparable to that of fresh garlic processors, for which garlic bulbs are the main input and packaging materials are the next most significant input. Petitioners add that ADF's depreciation costs were a relatively low percentage of all costs, representing 4.8 percent of manufacturing expenses.[67]

4) LT – Despite placing LT's financial statements on the record,[68] Petitioners did not make any arguments in their briefs as to whether or not LT's annual report is an appropriate source for calculating financial ratios for these final results. WAA argues that LT has five domestic subsidiaries and three foreign subsidiaries. According to WAA, this includes Kusha Inc., a large distribution company in the U.S. acquired in December 2007 by LTO North America Inc., a wholly owned subsidiary of LT. WAA argues that this acquisition has increased LT's market share from 7 percent to 52 percent in the U.S. market. WAA adds that the company's production and global market experiences are not comparable in any way with the companies in this review.

WAA adds that in the Petitioner's calculation of the surrogate financial ratios, the purchase of traded goods (rice), which accounts for 75.51 percent of raw materials, was excluded from the calculation, which means most of the rice sold by the company was purchased as finished products. WAA argues that this makes the financial-ratio information of the company not reliable. Finally, WAA also argues that financial

[65] ADF Foods products include "pickles, pastes, chutney, canned ready-to-eat vegetables, canned vegetable in brine, frozen foods, spices in whole and ground form, IQF Indian Vegetables, Ready-to-eat Indian Curries, Parathas, etc." See ADF Annual Report at 16.

[66] See id. at 50 (Note 15).

[67] Depreciation expenses (Rs. 360.90 lacs) divided by manufacturing expenses (Rs. 7,492.76 lacs). See Id. at 37 (Profit and Loss Account).

[68] See Petitioners' January 14, 2009 Surrogate Value Submission.

statements (2007/2008) are not contemporaneous with the POR (November 2006 and October 2007).

5) REI - Despite placing REI's financial statements on the record,[69] Petitioners did not make any arguments in their briefs as to whether or not REI's annual report is an appropriate source for calculating financial ratios for these final results. WAA contends that Petitioners calculations regarding REI are not accurate. WAA argues that "(u)nder SG&A (sic), there is only interest / financial charges; under Manufacturing, there is only depreciation." WAA also argues that REI's financial statements are not contemporaneous with the POR.

6) Lakshmi - Despite placing Lakshmi's financial statements on the record,[70] Petitioners did not make any arguments in their briefs as to whether or not Lakshmi's annual report is an appropriate source for calculating financial ratios for these final results. WAA argues Lakshmi is not comparable to the companies under review. WAA notes that (1) besides paddy/rice processing and wheat flour mill, Lakshmi also has a biomass based power plant,[71] (2) Lakshmi has a wholly-owned subsidiary - Punjab Greenfield Resources Limited,[72] (3) Lakshmi adopts current technology and has installed / is installing new equipments with latest technology for the purpose of rice processing[73], and (4) has well educated and experienced managers.[74]

7) Parry Agro - Despite placing Parry Agro's financial statements on the record,[75] Petitioners did not make any arguments in their briefs as to whether or not Parry Agro's annual report is an appropriate source for calculating financial ratios for these final results. WAA argues that in the previous NSR, Petitioners submitted Parry Agro's financial statements as the basis for the financial ratios. WAA argues that the Department rejected Parry Agro in that review,[76] and there was no substantial change between the previous NSRand the current NSR that would lead the Department to reconsider this finding.

In addition, WAA argues that Parry Agro's financial statement has an overly high profit rate (42.68 percent), which deviates hugely from the financial rate that the garlic industry in India generally experiences. Parry Agro's production facility and R&D laboratory are

[69] See id.

[70] See id.

[71] See Lakshmi Annual Report at 7.

[72] See id. at 8.

[73] See id. at 9.

[74] See id. at 17.

[75] See Petitioners' October 16, 2008 Surrogate Value Submission.

[76] "In evaluating financial statements for use in calculating the surrogate financial ratios, it is the Department's preference to match the surrogate companies' production experience with Respondents' production experience. Thus we continue to find that the non-integrated 2004-2005 Limtex financial statements are the best available information on the record to value overhead, SG&A, and profit, rather than the integrated financial statements of Parry Agro and Tata Tea." See 12th NSR Final at Comment 3.

automated,[77] and the company is an integrated tea producer.[78] Therefore, WAA argues, Parry Agro's production experience does not match WAA's production experience, which is the reason that the Department rejected Parry Agro's financial statement in the 12th NSR of fresh garlic from the PRC.[79]

Department's Position:

For the purposes of these final results, we are calculating financial ratios using an average of Limtex's, ADF's and Tata Tea's financial data. The Department believes that an average of the annual reports from these three Indian processors provides financial ratios that better reflect the broader experience of the surrogate industry than does Limtex's alone. The Department is using ADF's and Tata Tea's financial data since their production processes are more comparable to that of peeled garlic, which comprises an increasing share of all PRC garlic imports. The Department is also continuing to use Limtex's financial data since the company's process is comparable to less processed whole garlic bulbs. The Department believes that the resulting financial ratios from the average of Limtex's, ADF's and Tata Tea's financial data provides the best surrogate for the garlic industry in the PRC as a whole, based on the information on the record of this review.

The Department has not used financial data from Godfrey since the company's processing capacity appears to be significantly more sophisticated than the processing capacity of the garlic industry under review. Moreover, the Department has not used the financial data from Parry Agro because it is an integrated company that grows, processes, and sells its own products and thus it is dissimilar to the garlic producers under review.

Regarding LT, Lakshmi and REI, as noted above, these financial statements were placed on the record by Petitioners following the Preliminary Results.[80] Each of these companies produces rice. However, none of the interested parties provided a sufficient explanation as to how rice production in India might be comparable to garlic production in China. Indeed, there is only incomplete information on the record with regard to the production process or sales of rice. Thus, we cannot make any determination as to the comparability of expenses associated with rice processing to those of garlic processing. Accordingly, we will not use the financial statements LT, Lakshmi and REI to calculate financial ratios in these reviews Thus, the Department finds that the combined financial ratios of Limtex, ADF and Tata Tea provided the best available information for purposes of these final results.

Comment 4: Timing of Petitioners' Surrogate Value Submission

WAA argues that Petitioners' October 16, 2008 surrogate value submission was untimely. WAA states that prior to the Preliminary Results, the Department extended the deadline for submission

[77] See Petitioners' Surrogate Value Comments at Exhibit 4.

[78] See id. at 47.

[79] See 12th NSR Final at Comment 3.

[80] See Petitioners' January 14, 2009 Surrogate Value Submission. The financial statements that these three companies are rice producers. As support, Petitioners included information regarding the rice production process.

of surrogate value comments until September 16, 2008.[81] WAA argues that its surrogate value comments were timely filed on September 16, 2008. However, WAA argues, Petitioners submitted their surrogate value comments on October 16, 2008, a month after the deadline. WAA notes that Petitioners' surrogate value comments include information regarding garlic inputs and financial ratios, and that the Department incorrectly used in calculating the surrogate value for garlic bulbs.

Petitioners disagree with WAA's contention that the Azadpur garlic prices were submitted late. Petitioners argue that, pursuant to 19 CFR § 351.301(c)(3)(ii), the deadline for submitting surrogate value information for these final results was 20 days after the publication of the Preliminary Results.

Department's Position:

As stipulated in 19 CFR § 351.301(c)(3)(ii), interested parties may submit publicly available information to value factors within 20 days after the date of publication of the preliminary results. Therefore, the Department finds that Petitioners submission is not untimely and will not disregard information in these submissions for purposes of this final determination.

Comment 5: Water Factor Valuation

WAA stated that the Department used the Maharashtra Industrial Development Corporation (MIDC) as the basis for surrogate value for water in the Preliminary Results. WAA argues that the tariff charged by the MIDC is for industrial use, which is significantly more expensive than the tariff for agricultural use. Because garlic is an agricultural product, WAA argues that its submitted water tariff information from Damodar Valle Corporation is a more accurate measure of PRC garlic water values.

Petitioners argue that WAA's claim that water for industrial use is more expensive than the tariff for agricultural use has not been cited to or supported by any information on the record. Therefore, Petitioners argue the Department should not alter the preliminary results methodology based on unsupported information and should continue to use water rates from the MIDC.

[81] See August 21, 2008 Letter to All Interested Parties, Re: Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China (PRC).

Department's Position:

Since the Department is applying the intermediate input methodology (see Comment 1 above), the valuation of water used in the growing stage is not at issue because all costs, including water, are captured in the garlic bulb surrogate value used in our calculation of NV. We note that each respondent has reported using water in the processing of fresh garlic at their production facilities. Although garlic is an agricultural product, there is no information on the record to support the contention that the use of water in processing garlic is an "agricultural use." Rather, information on the record indicates that using water, in the processing of garlic, is akin to industrial use. See e.g., Anqiu Friend's verification report. Therefore, the Department will continue to value water using data from the MIDC using the industrial areas data categories for the final results.

Comment 6: Paper Label Valuation

WAA argues that the Department incorrectly used the Indian import value of HTS #4821.10.20 ("printed in whole or in part by a lithographic process") as the basis for the paper label surrogate value. WAA states that that they have never used any paper label printed by a lithographic process. Therefore, WAA argues the Department should use HTS #4811.41.00 ("self-adhesive paper & paperboard") as the basis for the paper label surrogate value.

Petitioners argue that WAA's claim that neither WFSN nor Anqiu Friend has ever used any paper label printed by a lithographic process has not been cited to or supported by any information on the record. Petitioners add that the Department should not alter the preliminary results methodology based on unsupported information. Therefore, Petitioners argue the Department should use the surrogate value that was used in the Preliminary Results.

Department's Position:

In accordance with our surrogate value selection criteria, the Department finds that in this case that the Indian HTS #4811.41.00 represents the best surrogate value based on the available information on the record. WAA states that they have never used any paper label printed by a lithographic process and images of the paper label used by WFSN for its peeled garlic sales were placed on the record in the company's section D responses.[82] Based on the image provided, the paper label appears to be a self-adhesive rectangular sheet, similar to the description of HTS #4811.41.00.[83] Therefore for purposes of these final results, the Department finds that the values derived from this HTS number are the best available information, and have changed our surrogate value calculations accordingly.

[82] See Weifang Shennong Foodstuff Co., Ltd.'s Response to the Department's Section D Questionnaire (May 21, 2008), at Exhibit D-6 (The Packing Material Pictures of Fresh Garlic Bulb and Peeled Garlic).

[83] HTS # 4811.41.00: 4811 "Paper, paperboard, cellulose wadding and webs of cellulose fibers, coated, impregnated, covered, surface-colored, surface-decorated or printed, in rolls or rectangular (including square) sheets, of any size, other than goods of the kind described in heading 4803, 4809 or 4810"; 41 "Self-adhesive".

Comment 7: Yield Factor Valuation

Petitioners argue that Anqiu Friend, WFSN, and Ningjin Ruifeng's reported yield factor for peeled fresh garlic was significantly understated in the Preliminary Results. Petitioners contend argue that Anqiu Friend, WFSN, and Ningjin Ruifeng have stated that they calculated the raw garlic consumption factor for peeled garlic by dividing garlic bulb input by total peeled garlic production. However, Petitioners contend that, at verification, it was revealed that the denominator included "export grade" peeled garlic, with the remaining weight being classified as "secondary grade/domestic grade" or "third class/low grade." Petitioners argue that the process of culling waste and unsalable peeled garlic must generate a significantly higher waste factor than the amount reported the companies.

Petitioners argue that Anqiu Friend, WFSN, and Ningjin Ruifeng's raw garlic consumption should have been allocated only over the export grade peeled garlic, and the correct ratio should have been calculated by dividing garlic bulb input by prime product. Petitioners contend that the Department should therefore apply a corrected consumption factor. Petitioners add that given their failure to properly report its consumption, none of these companies should be afforded an offset for its unreported and undocumented by-product sales.

WAA argues WFSN was correct to include secondary garlic and third-class peeled garlic in the denominator to derive its garlic consumption factor and thus WFSN's consumption factor should not be revised in the final results. WAA states that WFSN timely submitted its factor information to the Department and that the Department verified, among other things, the peeled garlic production and input and "found the information was consistent with the questionnaire responses."[84] In addition, WAA states WFSN's verification reports shows that peeled garlic of export grade, secondary, and third-class peeled garlic were all included in the finished products and recorded in the core business income account.[85] WAA argues that secondary and third-class peeled garlic have no difference from export grade peeled garlic in WFSN's production process and consumption, nor are they by-products of export-grade garlic. Therefore, WAA argues, WFSN was correct to include those two grades of peeled garlic in the denominator.

WAA states their reply for Anqiu Friend is the same as for WFSN, namely that Anqiu Friend was correct to include secondary garlic and third-class peeled garlic in the denominator to derive its garlic consumption factor and thus Anqiu Friend's consumption factor should not be revised in the final results.

Department's Position:

Based on the information on the record it appears that WAA has accurately reported their consumption factors in their respective questionnaire response. In the original questionnaire, the Department instructs WAA to report the quantity of garlic stage used to produce one kg of subject merchandise. Based on the information on the record, it appears that all grades of garlic (produced by the WAA) are subject merchandise, and not a by-product. Therefore, it appears

[84] See WFSN Verification Report, at 12.

[85] See WFSN Verification Report, at Exhibit 19.

that WAA correctly reported its yield factor in its responses. On this basis, the Department will not recalculate a yield factor for WAA for these final results.

Comment 8: Per Unit Assessment

On March 18, 2009, the Department issued a memorandum on per-unit assessment and cash deposit methodology and invited interested parties to provide comment for purposes of the final results.[86] Petitioners generally concur with the Department's proposed methodology.

WAA argues the Department's proposed methodologies should not be adopted and state that in the Per-Unit Memorandum, "the Department pointed out the problem of correlation between AD rate and AUV by observing the entries between 11/01/2007 and 6/16/2008, which indicates that the lower the AD rate, the higher the AUV; and the higher the AD rate, the lower the AUV."

In their rebuttal briefs, WAA states that in the Per-Unit Memorandum, the Department explained the "problem of correlation" between AD rates and the AUV (i.e., the lower the AD, the higher the AUV; the higher the AD rate, the lower the AUV). WAA states the Department addressed the duty collection problem by proposing per-unit assessment and cash deposit methodologies for the separate rate companies and PRC-wide entities. However, WAA argues, the law provides other methods for governmental agencies (e.g., the valuation under 19 U.S.C. 1484 (governing the entry of merchandise) and penalties under 19 U.S.C. 1592 (covering penalties for fraud, gross negligence, and negligence)), and therefore should not adapt the proposed methodologies for the final results.

Department's Position:

As explained in the Per-Unit Memorandum, the Department's analysis of U.S. Customs and Border Protection (CBP) data indicates that that the weight-average per-kilogram entered value for garlic has dropped significantly beginning in August of 2008, and that these per-kilogram entered values are significantly lower than the U.S. prices and NVs that are typically reported by garlic respondents. On this basis, the Department issued the aforementioned notice in which a per-unit assessment and cash deposit methodology was established for separate rate companies and PRC-wide entities. Consistent with the Department's practice, the Department has calculated per-unit cash deposit and assessment rates for the separate rate companies and companies that are part of the PRC-wide entity.[87]

Moreover, WAA's reliance on the CBP's general penalty to support its arguments presumes that the Department has no authority to enforce antidumping duty laws by preventing the underpayment of antidumping duties is incorrect. The Department "has been vested with authority to administer the antidumping laws in accordance with the legislative intent. To this end, the ITA has a certain amount of discretion {to act} … with the purpose in mind of preventing the intentional evasion or circumvention of the antidumping duty law." See Tung

[86] See Letter to All Interested Parties: The 2006/2007 Administrative Review of Garlic from the People's Republic of China (March 18, 2009) (Per-Unit Memorandum).

[87] See e.g., Honey from the People's Republic of China: Final Results and Rescission, In Part, of Aligned Antidumping Duty Administrative Review and New Shipper Review, 73 FR 42321 (July 21, 2008).

Mung Dev. Co. v. United States, 219 F Supp 2d 1333,1343 (CIT 2002), affirmed Tung Mung. Dev. Co. v. United States, 354 F 3d 1371 (Fed Cir 2004) (citing Mitsubishi Elec. Corp v. United States, 700 F. Supp. 538, 555 (1988), affirmed 898 F. 2d 1577 (Fed Cir 1990). Further, the CIT has affirmed the Department's practice of collecting antidumping duties on a quantity basis as a reasonable method for insuring that the proper duties are collected. See, e.g., Wuhan Bee Healthy Co. v. United States, Slip Op. 2008-61 (CIT May 29, 2008). Therefore, for the purposes of these final results, the Department will continue to use this per-unit assessment and cash deposit methodology to prevent the underpayment of cash deposits pursuant to the antidumping duty order in this case. See also Final Results of the Administrative Review of Fresh Garlic from the People's Republic of China: Separate Rate Companies and PRC-Wide Entity – Per-Unit Assessment Rates (June 8, 2009).

Comment 9: Anqiu Friend's Affiliations

Petitioners argue that at verification, the Department discovered two material omissions from the responses of Anqiu Friend. First, Petitioners contend that the company failed to disclose its apparent affiliation with Anqiu Haoshun. Petitioners note Anqiu Friend's verification report, where the Department asked Anqiu Friend about "a difference between the FDA registration number on a pro forma invoice…and the one provided to the Department." Petitioners explain that Anqiu Friend's explanation was that the FDA number reported in the questionnaire response actually belongs to Anqiu Haoshun, not Anqiu Friend. However, Anqiu Friend further explained, the FDA registration number on the invoice is the correct one. As Anqiu Friend and Anqiu Hoashun both share the same legal counsel, a mistake was made in filling out the questionnaire responses, thereby including Anqiu Haoshun's FDA registration number in Anqiu Friend's response.[88] Petitioners state that Anqiu Haoshun is a "discredited" respondent whose new shipper sale the Department had found to be not bona fide in a NSR running concurrently with the instant proceeding.[89] Petitioners contend that Anqiu Friend officials explained that once negotiations with customers are completed and purchase confirmed, the company issues a preliminary pro forma invoice. Petitioners contend that Anqiu Friend's argument that the misreporting of Anqiu Haoshun's FDA registration number on Anqiu Friend's pro forma invoice was merely an innocent mistake is not valid. Instead, Petitioners conclude, it shows that the two companies are one and the same.

Second, Petitioners argue, it was revealed that the FDA registration number belonging to Anqiu Friend was actually listed on the FDA website as belonging to one of Anqiu Friend's U.S. customers. Petitioners contend Anqiu Friend identified an individual who both "completed the FDA registration form on Anqiu Friend's behalf in 2005" and introduced Anqiu Friend to customers.[90] Given these two activities (i.e., providing Anqiu Friend with the FDA registration number of one of its customers; introducing Anqiu Friend to potential buyers), Petitioners argue that this individual worked as an agent for both Anqiu Friend and its customer, and therefore creates an affiliation between the two parties. Petitioners argue that it is not plausible and should not be accepted that Anqiu Friend personnel did not think this individual is affiliated with any

[88] See Anqiu Friend Verification Report at 5.

[89] See Preliminary Results.

[90] See Anqiu Friend Verification Report at 5.

company. Petitioners continue that the record reveals a pattern of deception. Petitioners argue that the role of the individual in question was not explained in the questionnaire response, and the verification report shows that Anqiu Friend first tried to conceal its relationship with its U.S. customer by falsely claiming only to have met this individual "once, at a Guangzhou trade fair…." but then admitting that "they had frequent contact" and that this individual introduced customers and provided Anqiu Friend's U.S. customer's FDA registration number. Petitioners argue that there was never an application for an FDA registration number filed on behalf of Anqiu Friend because the number in use was registered to its U.S. customer.

Petitioners add that Anqiu Friend's use of its customer's FDA registration number is also a serious issue even if it does not rise to the level of affiliation. Petitioners argue that Section 801(m) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. § 381(m), amended by section 307 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, requires prior notification and the use of an FDA registration number, which should be assigned to "the owner, operator, or agent in charge of a domestic or foreign facility that manufactures/ processes, packs, or holds food for human or animal consumption in the U.S., or an individual authorized by one of them, must register that facility with FDA."[91] Petitioners add that Section 801(ℓ) of the same Act, 21 U.S.C. Sec. 381(ℓ), also mandates that articles of food "from a foreign facility for which a registration has not been submitted…shall be held at the port of entry for the article, and may not be delivered to the importer, owner, or consignee of the article, until the foreign facility is so registered." Petitioners argue that it is a significant, material deficiency that the company was not using its own registration number. Petitioners contend that the merchandise should never have been delivered to the importer under these circumstances and should not be deemed bona fide for purposes of this review.

Petitioners conclude that Anqiu Friend has: (1) not unrevealed an affiliation with another, discredited Chinese garlic exporter; (2) not revealed an affiliation with a U.S. customer; (3) provided fraudulent documents; (4) attempted to mislead the Department at verification; and (5) illegally entered goods into the U.S. using a bogus FDA registration number. Therefore, Petitioners argue, Anqiu Friend's responses should be rejected in its entirety and that its margin for the final result be based on total adverse facts available.

In their rebuttal brief, WAA argues that Petitioners accusations that Anqiu Friend is affiliated with both Anqiu Haoshun and its U.S customer are groundless. Regarding Anqiu Haoshun, WAA argues that the only evidence of affiliation with Anqiu Friend was merely a typing error in filling out the questionnaire responses. With Regard to the the argument that the Anqiu Friend's FDA registration number actually belonging to one of Anqiu Friend's U.S. customer, WAA argues that Petitioners have provided no documents to support this statement. WAA states that the FDA registration documents on the record[92] demonstrate that the FDA number belongs to Anqiu Friend. WAA argues, due to language barriers, that it is common for Chinese exporters to ask its U.S. customers to file the FDA registration, and that helping with the FDA registration does not imply anything more than that. Therefore, WAA argues, the Petitioners charge of "unrevealed affiliation with another, discredited Chinese garlic exporter, unrevealed affiliation

[91] See http://www.cfsan.fda.gov/~dms/fsbtac12.html.

[92] See Anqiu Friend Verification Report at Exhibit 25.

with a U.S. customer, patently fraudulent documents, flagrant attempts to mislead the Department at verification, and illegal entries using a bogus FDA registration number" are groundless and lack substantial evidence. WAA concludes that the Department should disregard Petitioners request to reject Anqiu Friend's response and apply a margin based on AFA.

Department's Position:

The Department finds that there is insufficient information on the record to support the conclusion that Anqiu Friend is affiliated with either Anqiu Haoshun or its U.S. customer. The information on the record[93] indicates that Anqiu Friend's FDA registration number was its own and not that of its U.S. customer. Further, while Anqiu Friend failed to report that its U.S. customer provided its FDA registration number, there is insufficient information on the record to support the conclusion that Anqiu Friend's sales to this customer were not arm's-length transactions or to find Anqiu Friend to be affiliated with its customer.

Comment 10: Bona Fide Analysis of New Shipper Sales

Background
As noted in the Preliminary Results, while conducting a review, particularly a review where a company's margin would be based on a single sale, the Department examines price, quantity, and other circumstances associated with the sale under review, and must determine if the sale was based on normal commercial considerations and presents an accurate representation of the company's normal business practices. If the Department determines that the price was not based on normal commercial considerations or is atypical of the respondent's normal business practices, including other sales of comparable merchandise, the sale may be considered non-bona fide.

In the Preliminary Results, the Department preliminarily concluded that the single sale made by Haoshun during the POR was a not a bona fide commercial transaction and preliminarily rescinded the NSR with respect to Haoshun. See Memorandum from Scott Lindsay, Senior Case Analyst, Office 6, Re: Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China ("PRC"): Anqiu Haoshun Trade Co. Ltd. (December 1, 2008) (Haoshun Bona Fides Memorandum). In addition, the Department preliminarily found the sales made by Yuanli and Ningjin Ruifeng to be bona fide commercial transactions. See Memorandum from Summer Avery, Case Analyst, Office 6, Re: Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China ("PRC"): Zhengzhou Yuanli Trading Co., Ltd. (December 1, 2008) (Yuanli Bona Fides Memorandum) and Memorandum from Nicholas Czajkowski, Case Analyst, Office 6, Re: Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China ("PRC"): Ningjin Ruifeng Foodstuff Co., Ltd. (December 1, 2008) (Ningjin Ruifeng Bona Fides Memorandum).

Petitioners, Respondents, Yuanli and Ningjin Ruifeng have submitted extensive arguments regarding the Department's preliminary bona fides analyses of Haoshun's, Yuanli's and Ningjin Ruifeng's new shipper sales. In addition, these parties have submitted arguments as to whether

[93] See id.

the Department should rescind each company's NSR in these final results. In its comments, Petitioners argued that, based on a totality of circumstances, the Department should continue to find the single sale made by Haoshun to be not bona fide for these final results. Moreover, Petitioners argue that the Department should find of each of the single sales made by Yuanli and Ningjin Ruifeng to be not bona fide transactions for these final results. Conversely, Respondents, Yuanli and Ningjin Ruifeng argue that each of the sales at issue are bona fide. Most of the parties' arguments are based on information which is business proprietary. Thus, the parties' comments are fully discussed in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China (PRC): Bona Fides Comments Memorandum for Anqiu Haoshun Foodstuff Co., Ltd. (June 8, 2009) (Haoshun Comments Memorandum), Final Results of Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China: Bona Fide Analysis of Anqiu Haoshun Trade Co., Ltd.'s Sale (June 8, 2009) (Haoshun Final Bona Fide Memorandum), Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China (PRC): Bona Fides Comments Memorandum for Ningjin Ruifeng Foodstuff Co., Ltd. (June 8, 2009) (Ningjin Ruifeng Comments Memorandum), Final Results of Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China: Bona Fide Analysis of Ningjin Ruifeng Foodstuff Co., Ltd.'s Sale (June 8, 2009), (Ningjin Ruifeng Final Bona Fide Memorandum), and Final Results of Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China: Bona Fide Analysis of Zhengzhou Yuanli Trading Co. Ltd's Sale (June 8, 2009) (Yuanli Final Bona Fide Memorandum).

Department's Position:
Based on the totality of the circumstances as discussed below, for these final results, the Department continues to find Haohsun's single POR sale to be not bona fide, and has rescinded the NSR with respect to Haoshun. In addition, based on the totality of the circumstances as discussed below, for these final results, the Department has found Ningjin's single POR sale to be not bona fide, and has rescinded the NSR with respect to Ningjin. Finally, the Department has determined that Yuanli's sale was bona fide.

Haoshun: We continue to find that the single sale made by Haoshun during the POR is not a bona fide commercial transaction based on the totality of circumstances, namely: (i) the high price and low quantity of Haoshun's single POR sale; and (ii) other evidence of a non-bona fide transaction. Since much of our analysis regarding the evidence of the bona fides of the transaction involves business proprietary information, a full discussion of the bases for our analysis is set forth in the Haoshun Final Bona Fide Memorandum.

In sum, the totality of the circumstances of this sale leads the Department to find that Haoshun's POR sale is not a bona fide commercial transaction. Therefore, this sale does not provide a reasonable or reliable basis for calculating a dumping margin. For further information, see Haoshun Final Bona Fide Memorandum. As Haoshun had no other sales of subject merchandise during the instant POR, the Department is rescinding the NSR with respect to Haoshun.

Ningjin: We determine that the new shipper sale made by Ningjin was not a bona fide commercial transaction because Ningjin failed to establish payment terms while negotiating its U.S. sale, the quantity of the sale was unreasonably low and there is other evidence that this transaction may not have been made on an arm's-length basis. Since much of our analysis

regarding the evidence of the bona fides of the transaction involves business proprietary information, a full discussion of the bases for our analysis is set forth in the Ningjin Final Bona Fide Memorandum.

In sum, the totality of the circumstances of this sale leads the Department to find that Ningjin's POR sale is not a bona fide commercial transaction. Therefore, this sale does not provide a reasonable or reliable basis for calculating a dumping margin. For further information, see Ningjin Final Bona Fide Memorandum. As Ningjin had no other sales of subject merchandise during the instant POR, the Department is rescinding the NSR with respect to Ningjin.

Yuanli: We continue to find that the sale made by Yuanli was a bona fide commercial transaction. Specifically, we found that: (i) the price and quantity of the sale was within the range of the prices and quantities of other entries of subject merchandise from the PRC into the United States during the POR; (ii) Yuanli and its customer did not incur any extraordinary expenses arising from the transaction; (iii) the sale was made between unaffiliated parties at arm's length; and (iv) the timing of the sale does not indicate that this sale was not bona fide. Since much of our analysis regarding the evidence of the bona fides of the transaction involves business proprietary information, a full discussion of the bases for our analysis is set forth in the Yuanli Final Bona Fide Memorandum.

Based on our investigation into the bona fide nature of Yuanli's reviewed sale, its questionnaire responses, as well as its eligibility for a separate rate and the Department's determination that Yuanli was not affiliated with any exporter or producer that had previously shipped subject merchandise to the United States, we determine that Yuanli has met the requirements to qualify as a new shipper during the POR. Therefore, we are treating Yuanli's sale of subject merchandise to the United States as an appropriate transaction for this review.

Comment 11: Rescission of Chenhe and Greening

Shandong Chenhe International Trading Co., Ltd. (Chenhe) argues that the Department should rescind the 13th AR with respect to Chenhe and remove it from the list of companies subject to the PRC-wide rate, as determined in the Preliminary Results. Alternatively, Chenhe argues the Department should designate Chenhe as entitled to separate rate status and calculate its rate at the average rate of the mandatory separate rate respondents.

Chenhe participated in the 12th NSR, which covered the initial six months of the POR for the 13th AR. In the 12th NSR, the Department found Chenhe's single sale to the U.S. not bona fide and accordingly rescinded its NSR. (Chenhe states it is currently challenging this determination in the Court of International Trade and liquidation of the entry in issue is enjoined pending the final outcome of the litigation.) Chenhe notes it filed letters with the Department on December 12, 2008 and December 31, 2008, objecting to the Department's determination that Chenhe was subject to the 13th AR and that it was not one of the companies verified in the 13th AR.

Chenhe states that except for the one entry subject to its NSR, it had no other entries, exports or sales of the subject merchandise during the POR of the 13th AR. Thus, based on its decision in the 12th NSR and consistent with its longstanding practice, [94] Chenhe argues the Department

[94] Chenhe cites to a number of Department determinations as evidence of its practice. See Chenhe Case Brief at 3-4. See also Notice of Final Results of Antidumping Duty Administrative Review: Oil Country Tubular Goods

must rescind the 13th AR as to Chenhe for the first half of the POR, i.e. November 1, 2006 to May 17, 2007, pursuant to Section 351.213(d)(3) of the Department's regulations.[95]

Chenhe rebuts Petitioners' argument that Chenhe failed to cooperate in the 13th AR and thus its request for rescission should be rejected. See Petitioners' Letter of December 12, 2008. First, Chenhe states that Section 351.213(d)(3) of the Department's regulations (which permits rescission of ARs for companies with no entries, exports or sales during a POR) does not require a company to affirmatively advise the Department of its "no shipment" status. Rather, Chenhe argues, an AR should be rescinded, regardless of the participation of a non-shipping exporter, if the record confirms that shipments have not taken place. Next, Chenhe contends it did not fail to respond to a "Q/V" questionnaire. Rather than asking companies named as respondents to affirmatively submit Q/V data, which it would use to select mandatory respondents, Chenhe argues the Department conducted its own examination of CBP import data, which indicated that Chenhe had one shipment during the NSR POR, i.e. the one subject to the NSR. In addition, Chenhe notes the Department's Separate Rate Certification and Application forms indicate that the Department's consideration of applicants for separate rate treatment will be limited to NME firms that exported subject merchandise to the U.S. during the POR in a commercial transaction. Thus, when these forms were posted to the Department's website, Chenhe argues it reasonably believed there was no reason for it to respond because its sole sale to the United States during the 13th AR POR was already subject to an NSR and it did not otherwise have any sales during the remainder of the POR that would qualify it for a separate rate. Finally, Chenhe states that, in its letter of December 31, 2008, it requested the opportunity to supplement the record in this 13th AR, pursuant to Sections 351.301(c)(2) and 351.302(b) of the Department's regulations,[96] if the Department believed there was insufficient evidence of record to rescind the 13th AR as to Chenhe (i.e. information confirming an absence of sales). Chenhe reiterates the reasons provided in the letter as to why allowing Chenhe to supplement the record at that time was appropriate.[97] Since the Department has not responded to Chenhe's request, Chenhe suggests the Department

---

from Canada, 65 FR 60904 (October 13, 2000); Solid Urea from the Russian Federation: Final Results of Antidumping Duty New Shipper Review and Rescission of Antidumping Duty Administrative Review, 73 FR 29736, 29737 (May 22, 2008); Freshwater Crawfish Tail Meat from the People's Republic of China: Preliminary Results and Partial Rescission of the 2005-2006 Antidumping Duty Administrative Review and Preliminary Intent to Rescind 2005-2006 New Shipper Reviews, 72 FR 57288 (October 9, 2007); and Certain Pasta from Italy: Notice of Rescission of Countervailing Duty New Shipper Reviews, 68 FR 68034 (December 5, 2003).

[95] See, e.g., Roller Chain, Other Than Bicycle from Japan: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 63 FR 25450 (May 8, 1998).

[96] Chenhe also cites to Certain Preserved Mushrooms From the People's Republic of China: Final Results of Sixth Antidumping Duty New Shipper Review and Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review, 69 FR 54635 (September 9, 2004).

[97] Specifically, Chenhe argues: (i) the information it would submit (additional proof of no additional shipments during the POR as set forth in the Chenhe Verification Report) is already on the record in the NSR, in which Petitioners actively participated; (ii) Chenhe reasonably believed it was not required to actively participate in the 13th AR since its sole sale during the POR was the subject of an NSR; (iii) the Department did not affirmatively request that Chenhe submit Q/V data or otherwise affirmatively request that Chenhe advise the Department that it had no further shipments of subject merchandise during the POR; (iv) evidence on the record for the 13th AR already reveals that Chenhe exported only one shipment of subject merchandise to the U.S. during the POR, which was encompassed by the NSR; and (v) Petitioners would not be adversely affected by allowing Chenhe to supplement the record because Petitioners actively participated in the NSR and are familiar with Chenhe's shipment history during the POR. See Chenhe Letter of December 31, 2008 at 6-7.

has determined that additional information is not required to complete the record in the 13th AR before rescinding it as to Chenhe.

Chenhe concludes that continuing the 13th AR with respect to Chenhe would "elevate form over substance, would ignore factual information which the Department has verified in a NSR in which Petitioners actively participated and would be directly contrary to established Department practice that one sale cannot be the subject of two concurrent administrative proceedings." Chenhe Case Brief at 7. Thus, Chenhe argues, the Department should rescind the 13th AR as to Chenhe because its sole sale during the 13th AR POR was encompassed by the NSR and it had no additional exports to the U.S. during that period. Alternatively, Chenhe argues it is entitled to a separate rate since during the NSR, which encompassed the identical entry subject to the 13th AR, the Department verified Chenhe's business operations and determined it was entitled to a separate rate.

Petitioners state that Chenhe provides no support for its contention that "the Department has no choice but to rescind POR 13 as to Chenhe for the first half of POR 13." Petitioners Rebuttal Brief at 8, citing Chenhe Case Brief at 2-3. Instead, Petitioners argue that Chenhe's requests to alter the Preliminary Results with respect to Chenhe should be rejected for a number of reasons.

First, Petitioners argue the record in this review does not support a finding that Chenhe had only one POR entry. Petitioners state that Chenhe's reliance on data from the Department's March 28, 2008 Respondent Selection Memorandum to support its claim that it had no other entries, exports, or sales during the 13th AR POR is insufficient because such data are not dispositive as to whether Chenhe might have made other sales during the POR. Petitioners argue the Department has recognized CBP data are not "a foolproof or definitive source of information on total quantity and value of an exporter's sales" and thus Chenhe's failure to provide its own certified responses on the issue "cannot be excused by virtue of CBP data being placed on the record." Petitioners Rebuttal Brief at 8.

Next, Petitioners state Chenhe has no defense to the consequences of its failure to provide a separate rate response in the 13th AR. Petitioners argue the Department's requirements regarding certification of continued eligibility for a separate rate in the AR were well-publicized and followed by other respondents.[98] Although Chenhe was served with Petitioners November 30, 2007 request for review and specifically identified in the published notice of initiation, and despite the public posting of the separate rate documents on the Internet, Petitioners argue that Chenhe did nothing in response. Petitioners note that Chenhe's failure to respond contrasts with the behavior of multiple other respondents, who timely submitted their separate rate certifications to the Department in early May 2008.

In addition, Petitioners argue that Chenhe's belief that there was no reason for it to respond was not reasonable because it knew, or should have known, that the 13th AR would establish a new deposit rate and that companies that failed to established eligibility for a separate rate would be subject to the PRC-wide rate. Petitioners further argue Chenhe's contention that it did not have any POR sales is not supported by the record in the 13th AR. Moreover, Petitioners state that

[98] Petitioners note the Department publicly posted both its separate rate application and separate rate certification on the Internet on April 7, 2008, and had previously sent copies of the documents to Chenhe.

Chenhe did not advise the Department of its position until after the separate rate certification filing deadline had passed and did not seek guidance from the Department on this matter until it was too late in the review. Since it is not disputed that Chenhe had at least one sale during the 13th AR POR and did not establish eligibility for a separate rate, Petitioners argue the only appropriate action is liquidation based on the PRC-wide rate for the 13th AR and application of the same rate for calculation of ad valorem duty deposits going forward.

Finally, Petitioners argue Chenhe's request for rescission, or the alternative entitlement to a separate rate, is untimely as it was made after the Preliminary Results. Furthermore, Petitioners state Chenhe offered no explanation for its failure to appear in the 13th AR until December 12, 2008. Petitioners characterize the timing of Chenhe's first filing as occurring when "the Department and the parties were on the verge of verification." Petitioners Rebuttal Brief at 10. Thus, Petitioners argue, the Department should reject any effort by Chenhe to manipulate the review process by waiting until the last minute to appear and present new factual information regarding either separate rate treatment or the status of any POR entries from the company.

In light of the above, Petitioners state that analysis of Chenhe's untimely request misrepresents the situation that led the Department to treat the company as part of the NME entity and assign it the NME-wide rate in the Preliminary Results. Petitioners argue that Chenhe's treatment was not the result of an administrative error where the Department "forgot" that Chenhe was part of the 12th NSR, but rather of Chenhe's failure to appear and participate in a timely fashion, particularly in presenting information that established it remained entitled to a separate rate. Petitioners contend Chenhe's failure to cooperate supported that the legal presumption of state control remained uncontested, which in turn required a determination that Chenhe is no longer entitled to a separate rate.

Petitioners note that an NME respondent must demonstrate it is entitled to a separate rate before the Department can consider the status of its entries or the degree to which they are dumped. Thus, Petitioners contend, Chenhe's failure to cooperate required a determination that the threshold requirement for proceeding with any other aspects of its review, including analysis of whether the POR entry was already considered in another segment of the proceeding, was not satisfied.

Petitioners state the record contains nothing to indicate Chenhe is not part of the NME entity. Petitioners state Chenhe's failure to cooperate or respond to requests for necessary information requires the use of factors available and supports the use of adverse inferences under Section 776 of the Act. Even without considering whether the use of adverse inferences is warranted, Petitioners argue the record supports the decision that no separate rate is warranted, which is separately supported as an adverse inference in light of Chenhe's failure to cooperate.

Petitioners further state that in an NME AR the Department importantly considers the threshold issue of whether a respondent is entitled to a separate rate or whether it remains part of the NME-wide entity. Petitioners argue that Chenhe's failure to appear and respond to the Department's requests for necessary information regarding separate rates eligibility renders impossible any consideration of Chenhe's pricing practices during the review period because it is not entitled to separate analysis and review as a matter of law.

Petitioners also argue there is nothing on the record of the 13th AR to support Chenhe's claim that merchandise it acknowledged shipping during the POR is not properly subject to this review. Petitioners note the record of the 13th AR is closed and the deadline for submitting factual information passed on April 18, 2008. Thus, Petitioners argue, any attempt to reopen the record would be untimely and should be rejected, and that the Department should not under any circumstances exercise. Petitioners conclude that the Department's determination to deny Chenhe separate rate status is fully supported by Chenhe's failure to participate in the 13th AR until December 12, 2008.

On December 15, 2008, Shenzhen Greening Trading Co., Ltd. (Greening) filed a letter entering their appearance in the 13th AR to claim that Greening did not export any subject merchandise to the U.S. during the 13th AR POR. Accordingly, Greening sought revised publication of the Preliminary Results, in which Greening received the PRC-wide dumping margin of 376.67 percent, in order to keep the dumping margin they received in the 12th NSR, i.e. 2.12 percent.

Petitioners filed a letter on December 19, 2008, contesting Greening's apparent request that the Department rescind the 13th AR as to Greening. Petitioners note that Greening and a number of other PRC exporters received the PRC-wide rate in the Preliminary Results in light of their failure to apply for a separate rate. Petitioners argue that Greening's claim is contradicted by CBP data on the record, which reveals an entry of subject merchandise manufactured by Greening within the 13th AR POR. Thus, Petitioners argue that the inclusion of Greening in the 13th AR has been and remains consistent with the statute and in accordance with the law.

Moreover, Petitioners note the Department's regulations are permissive with respect to rescinding an AR based on no entries, exports or sales of subject merchandise during the POR. See 19 CFR 351.213(d)(3). Petitioners argue Greening's apparent request for rescission is not supported by record evidence, as the CBP data indicates Greening had an entry of subject merchandise during the 13th AR POR. Although the CBP data placed on the record does not enable researching the movement of Greening's shipment, Petitioners argue it is virtually impossible that Greening's shipment would not have arrived in the United States during the POR. Regardless, Petitioners contend, the statute and regulations address the review of entries for purposes of calculating dumping duties. See section 751(a)(2)(A) of the Act.

With respect to the timing of Greening's request, Petitioners contend Greening waited to exercise its rights by not participating or entering an appearance, let alone not filing separate rates application or certifications, until after the Preliminary Results were issued. Petitioners argue Greening's failure to appear earlier supports a determination to reject its untimely representations and arguments, as a matter of administrative efficiency and other considerations. In particular, Petitioners note that separate rates certifications in the 13th AR were due May 5, 2008, but Greening filed nothing, which properly resulted in the presumption that it does not qualify for a qualify for a separate rate and the assignment of the PRC-wide rate. Petitioners contend the record does not support reconsideration of that action. Rather, Petitioners argue the facts and circumstances with respect to Greening support a decision to continue to find it does not qualify for a separate rate and should receive the PRC-wide rate in the final results of the 13th AR.

Petitioners conclude Greening's request should be rejected because the factual premise of its apparent request is unsound, retention of Greening in this review is consistent with the statute and regulations, and continued assignment of the PRC-wide rate is warranted in light of the company's failure to presenting information establishing it is entitled to a separate rate.

Department's Position:

The Department has determined to not rescind the AR with respect to Chenhe and Greening. Pursuant to Section 751(a)(2)(A) of the Act, the Department shall determine the dumping margin for each entry of subject merchandise under review. If an exporter subject to a review does not believe that it had any entries, exports or sales of the subject merchandise during the POR, it is incumbent on the exporter to so inform the Department. The record of this review shows that neither Chenhe nor Greening timely submitted the required no shipment certifications or separate rates applications/certifications.[99] Accordingly, the Department does not have a basis on which to rescind these reviews pursuant to 19 CFR 351.213(d)(3).

Under 19 CFR 351.213(d)(3), the Department may rescind a review where there are no exports, sales, or entries of subject merchandise during the POR. However, the Department requires that a company certify that it had no exports, sales, or entries during the POR. The Department considers rescinding the review only if the producer or exporter, as appropriate, submits a properly filed and timely statement certifying that it had no exports, sales, or entries of subject merchandise during the POR. These submissions are subject to verification in accordance with section 782(i) of the Act. After receiving a timely, properly filed no shipment certification, it is the Department's practice to confirm the respondent's certification by making a no shipment inquiry with the CBP.[100] It is only with this evidence together that the Department believes it has a reliable basis to rescind an AR pursuant to 19 CFR 351.213(d)(3).

On November 30, 2007, Petitioners requested a review of multiple companies including Chenhe and Greening. The Department initiated said review on December 24, 2007.[101] On April 4, 2008, the Department issued separate rate applications and certifications to all companies who had not been selected as a mandatory respondent. The separate rate applications and certifications clearly instruct exporters to state whether they "made a shipment of merchandise that was entered for consumption in the United States or sold the merchandise during the period of this review." See Separate Rate Certification dated April 9, 2008. The due dates for submitting the separate rate certifications and applications were May 5, 2008 and June 3, 2008, respectively.

---

[99] Ten garlic exporters timely filed their no shipment certifications. Seven companies timely filed their separate rate certifications or applications.

[100] Jinan Farmlady Trading Co., Ltd., Qingdao Tiantaixing Foods Co., Ltd. and Qingdao Xintianfeng Foods Co., Ltd. each timely certified that they had no shipments. The Department examined shipment data and sent no shipment inquiries to the CBP and confirmed that there were no entries of subject merchandise from these three companies during the POR. Consequently, because there was no evidence on the record to indicate that these three companies had sales of subject merchandise under this order during the POR, pursuant to 19 CFR 351.213(d)(3), the Department is rescinding the review with respect to Jinan Farmlady, Qingdao Tiantaixing, and Qingdao Xintianfeng.

[101] On June 24, 2008, Petitioners withdrew their review requests for multiple companies. However, they did not withdraw their review requests for Chenhe and Greening.

Neither Chenhe nor Greening submitted a separate rate application or certification or informed the Department that they had no shipments of subject merchandise during the POR within the deadlines provided, nor did they request an extension of time in which to file such a submission. Only after the Preliminary Results did Chenhe object to its inclusion in the AR and request permission to supplement the record. As stated above, the separate rates application and certification clearly instruct the respondents to inform the Department whether they made any shipments.

Regarding Chenhe's claim to separate rate status, we note that the Department did not determine that Chenhe was entitled to a separate rate for the POR of the NSR because the review was rescinded. See Fresh Garlic from the People's Republic of China: Final Results and Rescission, In Part, of Twelfth New Shipper Reviews, 73 FR 56550 (September 29, 2008). Thus, Chenhe remained part of the PRC-wide entity. As Chenhe failed to submit separate rate application information on the record of this review, the Department has no basis on which evaluate its claim that it is entitled to a separate rate for these final results. Absent a finding that a company is separate from the PRC-entity for export purposes, the Department need not analyze further Chenhe's remaining arguments requesting rescission, because those arguments are all premised on an affirmative separate rates determination.[102] Unless and until a determination is made that Chenhe is entitled to a separate rate, its shipments are subject to the PRC-wide entity rate. Accordingly, the Department properly included Chenhe as a company subject to the PRC-wide entity rate in the Preliminary Results. With respect to Chenhe's NSR sale (which entered in the first six months of the instant POR), it is subject to the Department's liquidation instructions issued pursuant to the rescission of the NSR. We note, however, that liquidation is currently enjoined pending the outcome of ongoing litigation. Accordingly, the Department will instruct CBP to liquidate all Chenhe entries made in the six-month period covered by the AR at the PRC-wide entity rate.

With regard to Greening, the record shows that it submitted a letter stating that it did not export subject merchandise during the instant POR on December 15, 2008, one week after the Preliminary Results published. Moreover, Greening's untimely letter attesting that it had no exports of subject merchandise was not certified by a company official, as required under 19 CFR 351.303(g). As such, Greening's submission was untimely and deficient. As indicated by the Department's preliminary rescission in this case, and its standard practice, a decision to rescind an AR for lack of shipments is based on both information from the exporter as well as

[102] Nonetheless, we note that Chenhe's argument that the Department's regulation at 19 CFR 351.213(d)(3) does not require a party to affirmatively advise the Department of its no shipment status is misplaced. First, the regulation provides that the Department may rescind the review if there are no shipments, but it does not mandate rescission. Second, it does not speak to what evidence the Department considers sufficient to support rescission for no shipments. If a review has been requested, the Department presumes that there have been shipments by the exporter. Reviews often cover multiple exporters. The Department does not have the time or resources to independently determine which exporters may or may not have shipped during a given period of review. The CBP data to which Chenhe refers and on which the Department relied was utilized as a reliable basis on which to rank exporters for purposes of respondent selection, but not to definitively determine whether or not a given exporter has or has not made a shipment during the POR. These are separate factual determinations. As Chenhe was subject to the review, it was incumbent on Chenhe, as indicated in the separate rate application and certification, to inform the Department on a timely basis if it believed the review as to Chenhe should be rescinded.

information from CBP, allowing time for parties to comment on the data and the Department's preliminary decision, as well as possible verification of the no shipments claim. Greening's extremely late and deficient claim of no shipments simply did not allow the Department to complete all the steps necessary to make a decision, namely, the opportunity to inquire with CBP, to consider verifying the claim, or to allow parties to comment.

Moreover, we note that the Department found Greening to be eligible for a separate rate in its NSR which covered the period November 1, 2006 through April 30, 2007. See Fresh Garlic from the People's Republic of China: Final Results and Rescission, In Part, of Twelfth New Shipper Reviews, 73 FR 56550 (September 29, 2008). In the current review, the Department sent separate rate applications and certifications to all exporters subject to this review, including Greening. Greening had the opportunity to submit a separate rate certification in which it would have stated whether it had "made a shipment of subject merchandise that was entered for consumption in the United States or sold the merchandise during the period of this review" by May 4, 2008. Greening did not submit the required separate rate certification. Moreover, we note that Greening has not argued that that it is eligible for a separate rate for the final six months of the instant POR. Since Greening has not submitted the required separate rate materials, there is no basis on the record for us to examine whether Greening was eligible for a separate rate during the last six months of the instant POR and we must presume that Greening was part of the PRC-wide entity during that period. See, e.g., 19 CFR 351.107(d) (providing for the single NME entity presumption). We will instruct CBP to liquidate any Greening shipments entered in the last six months of the instant POR at the PRC-wide entity rate, while entries made during the NSR POR will continue to be liquidated at the rate established in the NSR.

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 this review and the final weighted-average dumping margins in the Federal Register.

AGREE_____ DISAGREE_____

_____
Carole Showers
Acting Deputy Assistant Secretary
for Policy and Negotiations

_____
Date