

Zhengzhou Harmoni Spice Co., Ltd., Jinan Yipin Corporation Ltd., Jining Trans-High Trading Co., Ltd., Jinxiang Shanyang Freezing Storage Co., Ltd., Linshu Dading Private Agricultural Products Co., Ltd., Shanghai LJ International Trading Co., Ltd., and Sunny Import and Export Ltd. v. United States
Court No. 06-00189
Slip Op. 09-39 (CIT May 13, 2009)

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

A. Summary

The Department of Commerce (“the Department”) has prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (“the Court”) in *Zhengzhou Harmoni Spice Co., Ltd., Jinan Yipin Corporation Ltd., Jining Trans-High Trading Co., Ltd., Jinxiang Shanyang Freezing Storage Co., Ltd., Linshu Dading Private Agricultural Products Co., Ltd., Shanghai LJ International Trading Co., Ltd., and Sunny Import and Export Ltd. v. United States*, 617 F. Supp. 2d 1281 (Ct. Int’l Trade 2009) (“*Harmoni Spice*”). The Court issued its opinion and remand order with regard to *Fresh Garlic From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews*, 71 FR 26329 (May 4, 2006), and accompanying Issues and Decision Memorandum (“*Final Results*”).

The Court remanded the following issues to the Department for further administrative proceedings consistent with the Court’s opinion and order: 1) the selection of data used in establishing a surrogate value of garlic bulbs; 2) the wage rate calculation methodology; 3) the selection of data used in estimating ocean freight costs; 4) the selection of data used in establishing a surrogate value for packing cartons; and 5) the selection of data used in establishing a surrogate value for plastic jars.

On May 13, 2009, the Court remanded the above issues to the Department for reconsideration. On June 5, 2009, the Department issued a letter to all Interested Parties, informing them that the Department placed new information on the record and was requesting comments by June 17, 2009. We additionally allowed Interested Parties to submit alternative surrogate values for factors of production by that date. The new data placed on the record included the Azadpur Agricultural Produce Marketing Committee's ("APMC") "Market Information Bulletin" (the "APMC Bulletin") data obtained from the record of the 2004-2005 administrative review, recalculated wage data using the methodology established in the *Expected Non-Market Economy Wages: Request for Comment on Calculation Methodology*, 70 FR 37761 (June 30, 2005), as well as Indonesian, Sri Lankan, Philippine, and Moroccan import data from a number of harmonized tariff schedule numbers ("HTS") for both cardboard cartons and plastic jars. On June 15, 2009, Grunfeld, Desiderio, Lebowitz, Silverman and Klestadt, LLP, on behalf of Zhengzhou Harmoni Spice Co. Ltd., Jinan Yipin Corporation, Ltd., Linshu Dading Private Agricultural Products Co., Ltd., Sunny Import and Export Ltd. ("Respondents") requested an extension of the June 17, 2009, deadline to July 1, 2009. In a letter dated June 17, 2009, the Department granted the extension in part. Comments were due and were submitted by June 24, 2009.

In a letter dated June 24, 2009, Respondents objected to the addition of new surrogate value data to the record. The Respondents claim that they were not granted sufficient time to fully review the new data or to adequately research potential new surrogate values. They further claim that the new data do not meet the standards of "best available information" given the Department's established methods for making a determination. Respondents recommend the

Department dismiss the new data and restrict its redetermination to the data already on the record.

On June 24, 2009, Kelley, Drye, and Warren, LLP, on behalf of the Fresh Garlic Producers Association, Christopher Rance, LLC, The Garlic Company, Valley Garlic, and Vessey and Company, Inc. (collectively, “Petitioners”), submitted comments on the new surrogate value data the Department placed on the record. Petitioners noted the use of the APMC Bulletin data to establish a surrogate value for Chinese garlic in the eleventh, twelfth, and thirteenth administrative reviews. Petitioners emphasized that the APMC Bulletin data provide the Department with a highly specific data set with characteristics similar to those of Respondents’ garlic, most notably as regards to bulb size. Additionally, Petitioners note that the Department’s use of the APMC Bulletin data would address the Court’s concerns regarding the region in which garlic is grown. Petitioners conclude that super-A grade garlic from the Himachal Pradesh state is the Department’s best choice for establishing a surrogate value for Respondents’ garlic.

Although Respondents claimed in their comments that they did not receive enough time to evaluate the new information on the record, after we granted, in part, their first extension request, no party indicated that it would not be able to respond fully by the extended deadline, nor did any party request a second extension of time to review the data. We note that with the extension the parties had from June 5, until June 24, 2010, to review the minimal new data placed on the record. In addition, on July 6, 2010, we provided further information on the calculation of the surrogate value for garlic bulb, as well as the breakdowns of the quantity, value, and average unit value from each country within the relevant import data included for jars

and cartons in our June 5, 2009, letter. We again requested that Interested Parties submit any comments and provided an additional opportunity for them to submit new information for the record by July 13, 2009. This allowed parties a second opportunity to provide comments regarding the surrogate value data placed on the record by the Department. On July 13, 2009, the Respondents submitted comments reiterating their concerns regarding the addition of new surrogate value data to the record. Respondents again argued that they were not granted sufficient time to fully review the data or to adequately research potential new surrogate values. However, they did not request an extension of time to do either.

Subsequently, the Court granted a motion for dismissal for Jining Trans High Trading Co., Ltd., Jinxiang Shanyang Freezing Storage Co., Ltd., Shanghai LJ International Trading Co., Ltd., and Zhengzhou Harmoni Spice Co., Ltd. on January 25, 2010, leaving Jinan Yipin Corporation, Ltd., Linshu Dading Private Agricultural Products Co., Ltd., and Sunny Import and Export Ltd., as the only remaining Plaintiffs (Respondents) in this segment of the proceeding on fresh garlic from the PRC. Accordingly, in this remand redetermination, we will only reevaluate dumping margins for Jinan Yipin Corporation, Ltd. (“Jinan Yipin”), Linshu Dading Private Agricultural Products, Co., Ltd. (“Linshu Dading”), and Sunny Import and Export Ltd. (“Sunny”), as a result of the Court’s ruling granting the motion for dismissal from the other parties.

On March 10, 2010, the Department released to parties a draft redetermination for the valuation of garlic bulb, wage rate, ocean freight, cartons and plastic jars (“*Draft Redetermination of Harmoni Spice*”). We requested that parties comment on the draft redetermination by March 17, 2010. On March 10, 2010, Respondents Jinan Yipin, Linshu

Dading, and Sunny requested an extension until March 24, 2010 to submit comments. The Department granted Jinan Yipin's, Linshu Dading's, and Sunny's request in part, allowing comments to be submitted by March 19, 2010. *See* Letter from Program Manager to Grunfeld, Desiderio, Lebowitz, Silverman, and Klestadt, LLP, dated March 12, 2010. Jinan Yipin, Linshu Dading, and Sunny submitted comments on the *Draft Redetermination of Harmoni Spice* on March 19, 2010. *See* Letter from Grunfeld, Desiderio, Lebowitz, Silverman and Klestadt, LLP, regarding: Comments on Draft Redetermination: POR 10 Fresh Garlic from the People's Republic of China (A-570-831), dated March 19, 2010 ("GDLSK Comments"). No other party commented on the *Draft Redetermination of Harmoni Spice*. We have addressed Jinan Yipin's, Linshu Dading's, and Sunny's comments below.

B. Analysis

1. Garlic bulb surrogate value

In the underlying review, the Department valued Respondents' intermediate garlic bulb product using price data for a type of garlic described as a "China" variety, obtained from the Indian Agricultural Marketing Information Network ("Agmarknet"). In its opinion, the Court found that the Agmarknet data was unsuitable as a surrogate value source, as no information exists on the record that describes the "China" variety of garlic the Department chose as a surrogate value. *See Harmoni Spice*, 617 F. Supp. 2d at 1298. The Court further faulted the Department's surrogate value selection stating that the record indicates that the "China" variety of garlic contained in the Agmarknet database is grown in only three Indian states, thus undermining the Department's obligation to seek out surrogate values that are country-wide. *See id.*, 617 F. Supp. 2d at 1299.

In selecting a surrogate value, “it is the Department’s stated practice to use investigation or review period wide price averages, prices specific to the input in question, prices that are net of taxes and import duties, prices that are contemporaneous with the period of investigation or review, and publicly available data.” *See* Non-Market Economy (“NME”) Surrogate Country Selection Bulletin (<http://ia.ita.doc.gov/policy/index.html>) at page 4 of the website version (“Surrogate Country Selection Bulletin”). Upon reconsideration of a surrogate value for garlic bulb, we have evaluated all potential data sources on the record for the attributes listed above.

Alternate surrogate value sources

In addition to the APMC Bulletin data described above and the Agmarknet data initially used in the underlying review, several other potential values for garlic are currently on the record of the underlying review: National Horticulture Research and Development Foundation (“NHRDF”) price data, as well as Indian import data for Indian Harmonized Tariff Schedule subheading 0703.2000 (described as “garlic, fresh or chilled”).

The Department has well-established criteria for determining the appropriateness of surrogate values under consideration. “It is the Department’s stated practice to use investigation or review period-wide price averages, prices specific to the input in question, prices that are net of taxes and import duties, prices that are contemporaneous with the period of investigation or review, and publicly available data.” *See* Surrogate Country Selection Bulletin. In the selection of surrogate values for garlic bulbs, we are similarly seeking to select as a surrogate value a period-wide price average that is highly specific to the product in question, publicly available, and contemporaneous with the period of review.

During the underlying review, Petitioners placed on the record NHRDF price data that the Department had used in previous reviews to value garlic seed. Petitioners argued that the NHRDF prices for garlic seed could be adjusted to reflect a surrogate value for garlic bulb with the application of a ratio of seed value to bulb value. Petitioners proposed that this ratio be derived using Mexican import data, which separates Mexican imports of garlic seed from Mexican imports of other garlic. *See Final Results* at 25. In the *Final Results*, the Department found the NHRDF price data and methodology proposed by Petitioners to be inadequate, as it required a high degree of adjustment and entailed data from imports into Mexico, which was not designated as a country economically comparable to the PRC during the course of this review. *See Final Results* at 47.

In the *Final Results*, the Indian import statistics were also rejected as a surrogate value for Respondents' garlic bulb, as they were deemed insufficiently specific. *See Final Results* at 39. The Department finds that the "basket" nature of Indian import data are unsuitable for valuing Respondents' garlic because of the size and number of cloves found in the garlic that Respondents produce. Additionally, the Indian import statistics do not allow the Department to ascertain the nature of the garlic products they describe (*e.g.*, bulbs, loose cloves). Due to the highly specific type of garlic produced by Respondents, and the other data on the record of this remand (as discussed below), we continue to find the import statistics do not represent the best available information with which to value the Respondents' garlic bulbs.

In the *Final Results*, the Department used Agmarknet data in order to derive a surrogate value for the "China" variety garlic bulb Respondents used as an input. *See Final Results* at 47. In its opinion, the Court found that there was insufficient evidence to conclude that the

Agmarknet data were representative of the inputs Respondents used. The Court emphasized that, while the Agmarknet data include a variety of garlic bulb described as a “China” variety, the Agmarknet database lists no further characteristics to indicate that Agmarknet’s “China” variety is sufficiently similar to Respondents’ inputs. *Harmoni Spice*, 617 F. Supp. 2d at 1297. The Court further noted that Agmarknet’s “China” variety of garlic is grown in three Indian states, only one of which is within a long-day growing region conducive to the Agrifound Parvati garlic variety. On January 5, 2006, in the underlying review, Petitioners submitted the *Market Research Report*, originally submitted during the 2001-2002 administrative review, which indicates that Agrifound Parvati is the closest variety (in terms of genetic origin, specifications, etc.) to Chinese garlic for the purposes of this review. *See Market Research Report* at 14. As the Agmarknet database contains data from two non-long-day growing regions, where the Agrifound Parvati variety is less likely to grow, the Court determined that the Agmarknet data were unrepresentative of Respondents’ inputs. Based on the Court’s direction we have reconsidered our valuation of garlic bulb for this administrative review.

Garlic bulb sizes vary, and the size of a garlic bulb is a factor in the ultimate price paid for the garlic. Indeed, the size of the garlic bulb is a strong determinant of the grade and price of garlic. *See* Letter from Collier Shannon Scott, PLLC, on behalf of Petitioners regarding: Tenth Administrative and Eight New Shipper Reviews of the Antidumping Order on Fresh Garlic from the People’s Republic of China, submitted on January 5, 2006, at Exhibit 33 (“*Market Research Report*”). Thus, the quality and detail of any data used to obtain a surrogate value for garlic bulbs is of importance. It was for this reason that we rejected Indian import data in the underlying review. *See Final Results* at 39. Chinese garlic exported to the United States has an

average bulb diameter far in excess of 40 mm, while indigenous Indian garlic typically has a considerably smaller bulb diameter. As the size of a garlic bulb often drives garlic prices in the marketplace, any data that fail to identify the size and quality of the garlic they describe are ultimately insufficient for this review. *See Final Results* at 42; *see also Market Research Report* at 20. Any data used to represent Chinese garlic bulb prices must fit the particular characteristics of Chinese garlic, which is a large, high yield, high quality variety different from much of the garlic grown in India. *See Final Results* at 40.

On June 5, 2009, the Department placed on the record of this review data from the APMC Bulletin covering the period May 1, 2006, through July 14, 2006. The APMC Bulletin contains a list of all fruit and vegetable sales on any particular day at the APMC. It further provides a minimum, maximum, and a modal price for each commodity sold. The APMC Bulletin also notes the weight of each sale, the region from which the produce originates, and the grade or size of the product. Several categories demarcate garlic bulb size in the APMC data, ranging from grade/size “C” to grade/size “super-A.” The size and weight categorization provided by the APMC Bulletin is consistent with the segmentation of garlic in Indian markets put forth in the *Market Research Report*, which lists grade A as having a bulb diameter greater than 40 mm, grade B as having a bulb diameter of 30 to 40 mm, and grade C as having a bulb diameter of less than 30 mm. *See Market Research Report* at 21. As of May 2006, the APMC Bulletin added an additional category, called super-A, which is defined as 40 mm garlic and above. *See* Petitioners’ June 24, 2009, submission at 4; *see also Fresh Garlic from the People’s Republic of China: Final Results and Partial Recission of the Eleventh Administrative Review*

and New Shipper Reviews, 72 FR 34438 (June 22, 2007), and accompanying Issues and Decision Memorandum (“11th AR *Final Results*”) at 12.

As noted above, in choosing the most appropriate surrogate value, the Department considers several important attributes, including the quality, specificity, and contemporaneity of the source information. *See, e.g., Glycine from the People’s Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 70 FR 47176 (August 12, 2005); *see also Fresh Garlic from the People’s Republic of China: Final Results of Antidumping Duty New Shipper Review*, 67 FR 72139 (December 4, 2002), and accompanying Issues and Decision Memorandum at Comment 5. The Department undertakes its analysis of valuing the factors of production (“FOP”) on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry. There is no hierarchy for applying the above-stated principles. Thus, the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the “best” surrogate value is for each input. *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) (“*Crawfish*”) at “Surrogate Value Information – Introduction.”

Upon reevaluation, we find the A and super-A sized garlic prices from the APMC Bulletin, deflated to be contemporaneous with the POR, produce the most accurate surrogate value in this review. This follows the reasoning laid out in previous decisions. *See* 11th AR *Final Results* at 12. The Department has concluded in several recent reviews that the size of both the garlic seed and garlic bulbs are given significant value in the marketplace. Thus, for

example, in India, the garlic bulb variety known as Agrifound Parvati is larger than the standard garlic grown and sold in India, and as a result is sold at a higher price. *See Final Results* at 41. It is therefore important for the Department to use surrogate Indian values for reflecting sales of garlic bulbs of similar diameter to that of Respondents' merchandise during the POR.

The vast majority of evidence indicates that the Chinese variety Respondents produce is significantly larger than the standard Indian variety. According to the *Market Research Report*, typical indigenous Indian garlic ranges in bulb diameter from 12 mm to 40 mm. *See Market Research Report* at 12. Chinese garlic is imported in whole bulb form and is large bulbed, with a diameter typically between 50 mm and 65 mm. *See Market Research Report* at 29; *see also Final Results* at 42. Of the seven initial Respondents, only five reported the bulb size of the garlic exported to the United States. Of those five Respondents, only Jinan Yipin and Linshu Dading classified their product's bulb size as non-proprietary information. The two Respondents reported their product's typical bulb size as 50 mm and above.¹ For this reason we find the two larger Indian varieties – super-A, which is defined in previous reviews as having bulbs greater than 55 mm in diameter and above, and A, which is defined as having bulbs between 40 and 55 mm in diameter – most similar to the garlic Chinese Respondents produce. *See 11th AR Final Results* at 12.

In its opinion, the Court criticized the Department's use of Agmarknet data on the grounds that it lacked any data from the long-day growing regions north of 30-degrees latitude.

¹ *See* Letter from Grunfeld, Desiderio, Lebowitz, Silverman and Klestadt, LLP, regarding: Section A, C and D Response of Jinan Yipin Corporation Ltd.: Administrative Review of Fresh Garlic from the People's Republic of China (A-570-831), submitted March 4, 2005, at , Exhibit 10; *see also* Letter from Grunfeld, Desiderio, Lebowitz, Silverman and Klestadt, LLP, regarding: Sections A, C, and D Response of Linshu Dading Private Agricultural Products, Co., Ltd.: Admin. Review of Fresh Garlic from the People's Republic of China (A-570-831), submitted March 4, 2005 at 25.

Sunlight is available for longer periods of time in long-day growing regions, facilitating the growth and development of garlic bulbs and allowing for a larger bulb size. *See Market Research Report* at 17. In contrast, while the APMC Bulletin data contain data points from garlic originating across India, that data set is also largely comprised of numerous specific garlic sales from several of the northern long-day growing regions, including Himachal Pradesh, Punjab, and Haryana. *See Market Research Report* at 18; *see also* Letter from the Department regarding: Record addition to the 10th administrative review of fresh garlic from the People's Republic of China, dated June 5, 2009, at 5.

Broad Market Average

It is the Department's practice to use country-wide data instead of regional data when possible in calculating surrogate values. *See Wuhan Bee Healthy Co., Ltd. v. United States*, Slip Op. 05-142 (CIT 2005) at 5. In choosing the most appropriate surrogate value, the Department considers several factors, including the quality, specificity, and contemporaneity of the source information. 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. *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 72139 (December 4, 2002), and accompanying Issue and Decision Memorandum at Comment 5.

We find that the APMC Bulletin represents a broad market average of large-bulb garlic and is inclusive of all possible data. In past cases we have found that official government publications are reliable and credible sources of information. *See, e.g., 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 Decisions Memorandum at Comment 1. According to the *Market Research Report*, the APMC we are relying on covers broad territory in India, and is not only the largest APMC in India, but at the time of publication was also the largest in Asia. See *Market Research Report* at 21. We note that each APMC Bulletin states that the APMC is an autonomous body of the government of the National Capital Territory (“NCT”) of Delhi. The APMC’s website (www.apmcazadpurdelhi.com) states that this particular APMC is India’s “National Distribution Centre” for several agricultural products, including garlic, as well as a declared “Market of National Importance.” Because the NCT, an Indian government entity, publishes the APMC Bulletin, we find the APMC Bulletin to be a reliable source of information for surrogate values.

The APMC Bulletin clearly shows that agricultural products from all over India are sold at the APMC, thus indicating that the APMC prices reflect a broad, market-based rate. We note that the total data set for super-A and A grades of garlic contains 198 points of data, representing over one thousand tons of garlic sold over a period of several months. The total data set comes from a broad array of seven Indian states (Uttar Pradesh, Rajasthan, Madhya Pradesh, Haryana, and Himachal Pradesh). Thus, we find that the APMC Bulletin is a reliable and credible representation of a broad market average for large sized garlic bulbs.

Public Availability

We further find the APMC Bulletin to be publicly available. The APMC Bulletin data are published on each trading day (six days a week), posted in the APMC’s facilities for public viewing, are electronically archived and are available upon request. While we note that the

APMC Bulletin is not obtainable on the Internet, it is otherwise readily available to its intended audience, wholesalers and buyers at The APMC in India, as well as any who request it through The APMC's website (<http://www.apmcazadpurdelhi.com/>).

Contemporaneity

We note that the APMC Bulletin data are dated after the POR. It is the Department's normal practice when using a surrogate value that post-dates the POR to deflate that surrogate value to be contemporaneous with the POR. *See Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 2905 (January 18, 2006), and accompanying Issues and Decisions Memorandum at Comment 6.

As noted above, there is no hierarchy in selecting the best information available to value an FOP. The Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the "best" surrogate value is for each input. *See Crawfish*. In this case, the bulb size significantly affects all FOPs and drives the selling price, thus bulb size is a key element in valuing the raw garlic bulb input. As was stated above, the APMC data includes prices from May 1, 2006, to July 14, 2006, while the POR is from November 1, 2003, to October 31, 2004. The Department does not automatically disregard surrogate value data which are the most specific to the input in question solely on the basis that they are post-POR data. *See Notice of Final Determination of Sales at Less than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers from the People's Republic of China*, 69 FR 20594 (April 16, 2004), and accompanying Issues and Decisions Memorandum at Comment 11. Accordingly, the deflated APMC data reflects the best information available with which to value the Respondents' garlic bulb inputs.

In addition to the deflation necessary to make the APMC garlic values contemporaneous with the period of review, we note that the APMC imposes a 6 percent market fee on sales made at the APMC, as indicated on the APMC website. We have deducted this amount from the final garlic bulb valuation.

In conclusion, the Department continues to find the Indian import data to be insufficiently specific to the input in question. We additionally continue to find that the NHRDF seed prices require a prohibitive level of adjustment crucially dependent upon a country not deemed representative of the PRC during the course of the review. As such, the NHRDF seed prices are not the best values on the record for garlic seed. With the Court's rejection of the Agmarknet data, and upon reconsideration of all possible surrogate values on the record for garlic bulb, the Department finds the average of super-A and A bulb values from the APMC Bulletin, deflated to be contemporaneous with the period of review, to be most representative of Respondents' inputs.

2. Reconsideration of the wage rate calculation methodology

A. Background

In the final results of the 10th AR, pursuant to 19 CFR 351.408(c)(3) of its regulations, the Department applied a regression-based methodology to determine the surrogate wage rate of \$0.97 for the PRC.²

In the current remand, the Court held that the Department's methodology did not appear to satisfy either the "economic comparability" or the "significant producer" criteria of section

² See *Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews*, 71 FR 26329 (May 4, 2006) ("*Final Results*"), and accompanying *Issues and Decision Memorandum for the Administrative Review and New Shipper Reviews of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China* (April 26, 2006) (Pub. Doc. No. 462) ("*Issues and Decision Memorandum*").

773(c)(4) of the Tariff Act of 1930, as amended (“the Act”) and failed to provide the necessary evidence, explanation, and justification to permit deviation from its standard factors of production methodology. *See Zhengzhou Harmoni Spice Co., Ltd., Jinan Yipin Corporation Ltd., Jining Trans-High Trading Co., Ltd., Jinxiang Shanyang Freezing Storage Co., Ltd., Linshu Dading Private Agricultural Products Co., Ltd., Shanghai LJ International Trading Co., Ltd., and Sunny Import and Export Ltd. v. United States*, Consol. Court No. 06-00189, Slip Op. 09-39 (CIT May 13, 2009) (“*Harmoni Spice*”). The Court determined further that the Department, if it continued to find that it was necessary to apply a regression-based methodology, must explain why this methodology was the best available information for valuing labor over the Chinese Respondents’ proposed alternatives. *See Harmoni Spice* at 38-41.

Pursuant to the Court’s remand instructions, the Department has analyzed all of the information on the administrative record, revised its methodology to be consistent with its current practice, concluded that its revised methodology is the “best available information” on the record, and explained how its methodology is consistent with the requirements of section 773(c) of the Act.³ Accordingly, the Court should affirm the Department’s wage rate calculation, as described below, as fully consistent with the Court’s analysis and direction, and supported by substantial evidence on the administrative record.

B. The Act and The Department’s General Factors of Production Methodology

Section 773(c)(1)(B) of the Act directs the Department, in determining a company’s normal value (“NV”) within a Nonmarket Economy (“NME”), to select surrogate factors of production using the “best available information” on the administrative record. In selecting the

³ *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716 (October 19, 2006) (“*AD Methodologies: ME Inputs, Wage Rates, Request for Comment*”)(describing the Department’s revised methodology is consistent with its regulation and statute).

“best available information,” the Department’s ultimate goal is to calculate an accurate antidumping duty margin. *See Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1191 (Fed. Cir. 1990). This “best” choice is ascertained by examining and comparing the advantages and disadvantages of using certain data as opposed to other data. *See Guangdong Chemicals Imp. & Exp. Corp. v. United States*, Slip Op. 06-142, at 8 (2006).

In selecting the best available information, Congress provided the Department with guidance in section 773(c)(4) of the Act. Section 773(c)(4) states that “to the extent possible,” the Department must “utilize” “prices or costs of factors of production in one or more market economy countries that are: (A) at a level of economic development comparable to that of the nonmarket economy country, and (B) significant producers of comparable merchandise.”

When the Department has determined that the information is inadequate for purposes of calculating the NV of subject merchandise under section 773(c)(1) of the Act, the Department’s regulations provide further guidance for the specific methodology utilized in selecting the most appropriate market economy country for calculating normal value. As outlined in 19 CFR 351.408(b), in determining whether a country is at a level of economic development comparable to the non-market economy under section 773(c)(2)(B) of the Act, the Department places primary emphasis on per capita GDP as the measure of economic comparability.

Using the criteria of economic comparability, the Department employs a four-step process in selecting the most appropriate market economy country for calculating NV. This four-step process consists of: (1) compiling a list of countries that are at a level of economic development comparable to the country being investigated; (2) ascertaining which, if any, of those cited countries produce comparable merchandise; (3) determining from the resulting list of

countries, which, if any, of the countries are significant producers of comparable merchandise; and (4) finally, evaluating the quality, *e.g.*, the reliability and availability, of the data from those countries. *See Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process* at 2 (March 1, 2004), available at <http://ia.ita.doc.gov/policy/bull04-1.html>. (“*Policy Bulletin*”). Additionally, when selecting the most appropriate market economy country for calculating NV, it is the Department’s practice to value all FOPs, except for labor, from a single market economy country, pursuant to 19 CFR 351.408(c)(2). It is only in certain instances where reliable data for a specific FOP from the selected surrogate country are unavailable will the Department look at data from another significant producer of comparable merchandise for surrogate valuation purposes.⁴

In applying the surrogate country selection process to products from the PRC subject to investigation or review, the Department has normally selected India as the primary surrogate market economy country, *see, e.g., ISOS Final 2005; Malleable Pipe Fittings Final 2006; KASR 2009*,⁵ as was done in the case subject to this remand redetermination, *Final Results*. The Department’s selection of India as the primary surrogate market economy country in the cases cited above was based on the four-step process outlined above, and resulted in the selection of a

⁴ *See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Notice of Preliminary Results of the New Shipper Review and Fourth Antidumping Duty Administrative Review and Partial Rescission of the Fourth Administrative Review*, 73 FR 52015, 52018 (September 8, 2008), unchanged in *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews*, 74 FR 11349 (March 17, 2009).

⁵ *See Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China*, 70 FR 24502, 24504 (May 10, 2005) (“*ISOS Final 2005*”); *Malleable Iron Pipe Fittings from the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 76234 (December 23, 2005), unchanged in *Malleable Iron Pipe Fittings from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 37051 (June 29, 2006) (“*Malleable Pipe Fittings Final 2006*”); *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 36656, 36659 (July 24, 2009) (“*KASR Final 2009*”); *Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Rescission in Part*, 69 FR 70638, 70641 (December 7, 2004) (“*Fresh Garlic Prelim*”), unchanged in *Fresh Garlic Final 2005*.

surrogate that was representative of the Respondents' production experience in each of those cases. However, the selection of the primary surrogate market economy country is also dictated by whether selecting a single specific country would result in using data that is not the "best available information" and thus could result in a less accurate antidumping duty margin.

C. The Wage Rate FOP, By Its Nature, Is Different From Other FOPs

As noted above, the Department's standard FOP analysis works well for all factors but labor (*i.e.*, wage rates). The Department has found that by its nature, labor differs from other factors. It varies largely from country to country, and is highly influenced by socio-economic factors that give rise to a great variety of national labor frameworks, having little to do with the size and strength of the economy. Consequently, research shows that there are wide variances in wage rates between comparable economies.⁶

By using FOPs to construct a NV in an NME, the Department essentially creates a "hypothetical" market value to approximate the production experience in the NME country. *See Nation Ford Chemical Company v. United States*, 166 F. 3d 1373, 1377-8 (CIT 1999). While there is no way to ensure that the estimated wage rate for a "hypothetical" market economy is perfect, the Department has determined through its practice and experience that the wage rate from any single country will likely distort the accuracy of its overall NV, because a single surrogate wage rate would be unrepresentative of the labor experience of the reviewed PRC industry. Labor policies are dictated by politics with often little relationship to the size or strength in the economy. These differences may mean little if the Department is trying to derive a market value for the FOP of traded commodities, such as coal or nickel, for example. However, when the surrogate being used is for labor, which is not a traded commodity, these differences

⁶ See Attachment 1 (2003 Expected Wages of NME Countries, Wages and GNI Per Capita in 2003 US Dollars).

have a very real, obvious effect on the “hypothetical” market value at issue.

Admittedly, the use of a single country wage rate would be simpler from the Department’s perspective and require less effort on behalf of the agency and parties to administrative proceedings, but the agency has concluded that the benefits of administrative ease are outweighed by the inaccuracies and distortions introduced into its calculations by an unrepresentative surrogate wage rate from a single country. Accordingly, the Department’s practice in valuing labor FOPs differs from its standard FOP analysis.

D. Problems In Determining a Representative Wage Rate Surrogate Value

Over the years, the Department has concluded that despite the differences in labor policies between individual countries, there is both a strong positive relationship between wage rates and gross national income (“GNI”), as well as a large variation in the individual wage rates of comparable market economies. For example, using data derived from the International Labor Organization (“ILO”), observed hourly wage rates for market economy countries with national incomes below US \$1,000 range from US \$0.12 to US \$0.89 while the observed hourly wage rate for market economies with GNIs ranging approximately \$900 higher and lower than the PRC’s (with a GNI of US \$1270) ranged from US \$0.12 to US \$1.76. *See* Attachment 1 (2003 Expected Wages of NME Countries, Wages and GNI Per Capita in 2003 US Dollars). In other words, on average, as GNIs increase, so too do hourly wage rates. This would lead one to presume that any reasonable analysis the Department uses to derive a wage rate should look to potential surrogate countries’ GNI as a relevant factor.

However, alongside this relationship between GNI and wage rates, there is also an

increase in the variation of individual wage rates.⁷ The Department’s 2003 regression dataset used in this remand, attached hereto, illustrates this variability. *See* Attachment 1. If the Department chose to use the single wage of the selected surrogate market economy country to value labor in a proceeding involving the PRC, values for labor might range from US \$0.12 to US \$1.07, depending on which economically comparable country is selected as the surrogate. For example, India’s wage rate is the lowest reported wage rate in the Department’s 2003 dataset, US \$0.12, despite the fact that its GNI is far larger than many other countries. *See* Attachment 1. Because of the peculiar inverse relationship between India’s GNI and average wage rate, one could presume that if India were an NME, and wage rates in India were being valued using a surrogate value from a “comparable economy” that is a “significant producer” of the subject merchandise, under the Department’s normal methodology, the chosen value would likely result in a significantly higher NV than India’s reported wage rate.

Table 1 shows what the expected wage rate for India might be using a single wage rate method.

⁷ *See Antidumping Duties: Countervailing Duties: Proposed Rule (Preamble)*, 61 Fed. Reg. 7308, 7345 (Feb. 27, 1996)(“*Proposed Rule*”); *Antidumping Duties: Countervailing Duties; Final Rule (Preamble)*, 62 FR 27295, 27367 (May 19, 1997)(“*Final Rule*”).

Table 1

Estimating India’s Wage Rate⁸

Table 1 presents the results of four methods for estimating what India’s wage rate could have been in 2003, given its **GNI of U.S. \$530**, as well as the difference between these estimates and the **actual reported hourly wage of U.S. \$0.12**, that India reported to the ILO in 2003.

Single Wage Rate		Average Closest Eight		Average \$750-range		Average \$1,500-range	
Wage	Difference From 0.12	Wage	Difference from 0.12	Wage	Difference from 0.12	Wage	Difference from 0.12
0.34 to.1.07	0.22 to 0.95	0.77	0.65	0.80	0.68	0.95	0.83

As the table shows, because India’s wage rate is so low relative to its GNI, each method of determining a representative wage-rate “overstates” India’s wage rate.

This variability is even more pronounced in the case of poorer countries, where wage rates can be so low that even a difference of a few cents can appear to be enormous if represented in percentage terms. In the case of India, for example, the standard methodology of using surrogate values from a single country would result in a wage rate that is unreasonably high, while in other countries, the result might well be unreasonably low. Such variability in

⁸ The first column presents the range of wage rates that the Department might choose if it were to select one country’s wage rate as a surrogate value for labor for a country with a GNI of US \$530. *See* Attachment 1 (Egypt, Philippines, and Sri Lanka, other economically comparable countries that submitted GNI and wages to the ILO). The second column presents a wage rate for each NME arrived at by averaging the wage rates reported by eight market economies with the closest GNIs to US \$530. *See* Attachment 1 (2003 Expected Wages of NME Countries, Wages and GNI Per Capita in 2003US Dollars) (Pakistan, Mongolia, Nicaragua, Sri Lanka, Paraguay, West Bank, Philippines, and Egypt). The third and fourth columns present a wage rate for each NME arrived at by averaging the wage rates reported by market economies with GNIs approximately US \$750 and US \$1500 higher and lower than US \$530. *See* Attachment 1 (Pakistan, Mongolia, Nicaragua, Sri Lanka, Paraguay, West Bank and Philippines for economies with GNIs approximately US \$750 higher and lower than US \$530) (Pakistan, Mongolia, Nicaragua, Sri Lanka, Paraguay, West Bank, Philippines, Egypt, Albania, Guatemala, Iran, Kazakhstan, Colombia, Ecuador, Dominican Republic, Macedonia, and Jordan for economies with GNIs approximately US \$1500 higher and lower than US \$530). Each method relies on all data available in the Department’s 2003 expected NME wage rate used for this remand, not including India’s data.

potential surrogate wage rates underscores the unpredictable result of using our standard methodology to determine a surrogate value for labor. Thus, this increase in variations between wage rates from country to country provides the Department with significant challenges in determining a reasonable surrogate value for labor. Accordingly, the Department has concluded that in determining a surrogate value methodology for labor, it must attempt to address this variability in selecting a surrogate wage rate.

E. The Department's Overall Regression Based Methodology

In light of the strong positive relationship between wage rates and GNI and the large variation in the individual wage rates of comparable market economies, the Department has determined that pursuant to section 773(c)(1), it must attempt to address these factors in deriving the “best available information” for selecting a surrogate wage rate value for the PRC. Accordingly, the Department implemented a regression-based methodology that takes both of these factors into consideration. Further, in 1997, the Department issued a regulation that indicates the “regression-based wage rates reflective of the observed relationship between wages and national income in market economy countries” would be used to value the labor FOP. *See* 19 CFR 351.408(c)(3); *Final Rule*, 62 FR at 27367.

The Department uses the results of the regression and NME GNI data to estimate hourly wage rates for NME countries. Under the Department's standard methodology, it uses an ordinary least squares regression analysis⁹ to estimate a linear relationship between per-capita

⁹ A “linear least squares regression” model is the most widely used statistical modeling method. It is what most people mean when they say they have used “regression,” “linear regression” or “least squares” to fit a model to their data. A regression line is a straight line that describes how a response variable “y” changes as an explanatory variable “x” changes. You can predict the value of “y” for a given value of “x” using a regression line. A “least

GNI and hourly wages in market economy countries. Once the Department has the results of the regression analysis, it then takes this data and applies it to the NME's (*i.e.*, China's) own GNI data to estimate an hourly wage rate that is specific to the NME. *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 6176, 61722 (Oct. 19, 2006) (“*Revised Methodology Notice*”).

In the *Final Results*, the Department used a regression methodology that drew GNI and wage rate information from a basket of countries that has subsequently been modified in current agency practice. In the Department's *Revised Methodology Notice*, the Department explained that it believed that the basket of economies from which GNI and wage rates should be derived should be “expanded to include all countries for which data are available” that “meet the Department's suitability requirements.” *See Revised Methodology Notice*, 71 FR at 61722. The Department also explained in the *Revised Methodology Notice* that it was modifying the pool of data from which it was selecting the wage rates from each country for use in its calculations in other ways as well. *See id.* This Court has indicated that the Department must explain on remand why including data from a basket of economies for which all data are available would not result in a more accurate wage rate. *See Harmoni Spice* at 38. In accordance with the methodology outlined in the *Revised Methodology Notice* and in response to the Court's

square regression” line is the regression line that endeavors to find the sum of the squares of the vertical distances on the data points (the changing, response variables) that stray the least amount from the horizontal (known, explanatory) line. Put another way, this method minimizes the sum of squared distances between the observed responses in a set of data and the fitted responses from the regression model. Under The Department's model, “x” is a country's GNI, and “y” is the estimated wage rate.

concerns, the Department has applied its revised methodology in this remand, which expands the basket of economies “from which GNI and wage rates are derived to include all countries for which data are available.” See *Revised Methodology Notice*, 71 FR at 61722 and *Harmoni Spice* at 38. Thus, for purposes of this remand redetermination, the Department has continued to use a regression based methodology as it did in the *Final Results*, but has modified the pool of data from which it derives its analysis using the data sources it uses in its current practice, which has, in turn, expanded the pool of countries from those used in the *Final Results*.¹⁰

F. The Data Sources Used In The Department’s Valuation of the Market Economy Wages

1. The Base Year

There is usually a two-year interval between the year being reviewed in an administrative review, and the most recent reporting year of the data required for the Department’s wage-rate analysis, due to the practices of the respective data sources. The Department bases its regression analysis on the most recent reporting year of the World Bank’s Development Indicators, which the Department refers to as the “Base Year.” For example, in this remand, the Department relied

¹⁰ Consistent with our practice in prior remands where we have applied the revised regression-based wage rate methodology for calculating wage rates, we have obtained new data from the ILO to calculate wage rates using the revised regression-based wage rate methodology outlined in the *Revised Methodology Notice*. See *Wuhan Bee Healthy Co., Ltd. vs. United States*, Slip Op. 07-113 (CIT 2007), Final Results of Determination Pursuant to Court Remand at 4; *Zhejiang Native Produce & Animal By-Products Import & Export Group Corp. vs. United States*, Slip Op. 08-68 (CIT 2008), Final Results of Determination Pursuant to Court Remand at 6. The new calculation is attached to the results of this remand at Attachment 1. The revised regression-based wage rate calculation used in this remand includes data for all countries in the regression analysis which meet the Department’s selection criteria outlined in the *Revised Methodology Notice*, including: Albania, Argentina, Bahrain, Cyprus, Czech Republic, Denmark, Dominican Republic, Estonia, Hong Kong, Hungary, Iceland, Islamic Republic of Iran, Isle of Man, Jamaica, Kazakhstan, Latvia, Lithuania, Luxembourg, Macedonia, Malta, Mongolia, New Zealand, Peru, Portugal, Russian Federation, Serbia, Seychelles, Slovakia, Trinidad and Tobago, Ukraine, and West Bank and Gaza. However, the Department has removed the following countries from the revised regression-based wage rate calculation as they did not meet the selection criteria outlined in the *Revised Methodology Notice*: Bolivia, Botswana, Chile, Costa Rica, Malaysia, Thailand and Turkey. See Attachment 1 for a list of all countries included in the revised regression calculation.

upon data from 2003 to calculate NME wages in 2005, *i.e.*, the “Base Year” for the 2005 calculation was 2003. Accordingly, in practice, the “Base Year,” *i.e.*, the year upon which the regression data are based, is two years prior to the year in which the Department conducts its regression analysis.

The Department’s regression analysis relies upon four distinct data series: (A) country-specific wage rate (earnings) data from Chapter 5B of the ILO’s *Yearbook of Labour Statistics*; (B) country-specific consumer price index (“CPI”) data from the *International Financial Statistics* of the International Monetary Fund (“IMF”); (C) exchange rate data from the IMF’s *International Financial Statistics*; and (D) country-specific GNI data from the *World Development Indicators* of the World Bank (“WB”).

The wage rate data described above are converted to hourly wage rates and, if necessary, adjusted using CPI data to be representative of the current Base Year. The data are then converted to U.S. dollars using the appropriate exchange rate data. A regression analysis is ultimately run on these adjusted wage rate data and GNI data.

2. Contemporaneous ILO Wage Data (Earnings)

For each country for which *Yearbook of Labour Statistics* Chapter 5B data are available (as described below), the Department chooses a single wage rate that represents a broad measure of wages for that country. The Department will choose data that are either contemporaneous with the Base Year or one year prior where data for the Base Year are not available. In the data used by the Department in the *Final Results*, the Department included data from Chapter 5B of the *Yearbook of Labor Statistics* published by the ILO that had been reported within five years of the Base Year, thereby including a total of six years of data. Reviewing the methodology, the

Department determined that adjusting the data for CPI would reduce the accuracy of the calculation, as CPI-adjusted six-year old wage rate data may not represent the dynamics of the labor market today. *See Revised Methodology Notice*, 71 FR at 61721. Further, the Department recognized that the amount of contemporaneous data that is publicly available has increased significantly since the issuance of the *Final Results*, rendering adjusting the old data no longer necessary. Therefore, as of 2006, the Department has relied only on ILO wage data that have been reported one year prior to the Base Year. For purposes of this remand redetermination, the Base Year is 2003. Accordingly, the Department has relied only on ILO wage data reported in 2003 or one year prior (2002) and excluded any data for countries that only reported data more than one year prior to 2003 (*i.e.*, 2001, 2000, 1999 data, etc).

3. The Department's Suitability Requirements for Wage Rate Data

The ILO *Yearbook of Labour Statistics* Chapter 5B database categorizes data under a number of parameters. For purposes of this remand, the Department prioritized these parameters in order to arrive at a single wage rate for each country representing the broadest possible measure of wages. As such, the Department determined there were three criteria that all data must meet in order to be considered suitable for the Department's regression analysis. First, under the category "Type of Data," the Department considered the data most suitable for the regression to be the data that are reported in "earnings," data that cover both men and women, and data that represent all reported industries.¹¹ The ILO defines "earnings" under Chapter 5B of its *Yearbook of Labour Statistics* as being inclusive of "wages," and as including both bonuses and gratuities. The Department determined that, to ensure that its calculation of expected NME

¹¹ For a more detailed discussion of how The Department prioritizes information, *see Revised Methodology Notice*, 71 FR at 61722.

wage rates accurately reflects the remuneration received by workers it should rely on “earnings,” not “wages” as the “best information available.”

Second, under the category “Sex,” the Department only used data that covered both men and women (the Department did not consider values of “Indices, Men and Women” for this parameter).

Third, under the category “Sub-Classification,” the Department only used data that represented all reported industries. This is indicated in the database by a value of “Total” for the “Sub-Classification” parameter.

When the Department found more than one record in the ILO database that met these three requirements, the Department chose the data point from the Base Year over data from the prior year. At times, there was more than one data record in the ILO database that was both (1) reported in the same, most contemporaneous year; and (2) met the three required criteria above. In such case, the Department chose a single data point by prioritizing the following parameters: (1) “Worker Coverage,” *i.e.*, coverage of different types of workers; (2) “Type of Data,” *i.e.*, the unit of time for which the wage is reported; and, (3) “Source ID,” *i.e.*, a code for the source of the data. For example, for the parameter “Worker Coverage,” the Department considered “wage earners” to be the best measurement for calculating expected NME wages and prioritized such data over “employees,” “salaried employees,” and “total employment,” in that order.

When the values for all parameters listed above were equal, the Department prioritized data reported on an hourly basis over that reported on a daily, weekly, and monthly basis, in that order, for the parameter “Type of Data.” Through this choice, the Department minimized error due to converting daily, weekly, or monthly wages to hourly wages.

When the values for all parameters listed above were equal, the Department prioritized data classified under the International Standard Industrial Classification (ISIC) Revision 3 (ISIC Rev.3-D) over ISIC Revision 2 (ISIC Rev.2-3). ISIC Rev. 3-D was revised in 1989 and is a more recent classification standard than the 1968 ISCI Rev. 2-3.

See <http://unstats.un.org/unsd/cr/family2.asp?CI=2>

and <http://laborsta.ilo.org/apply8/data/isic2e.html>.

Finally, when the values for all parameters listed above were equal, the Department prioritized data with a “Source ID” value of “no value” over “1,” “2,” and “3,” in that order. The ILO data that were not reported on an hourly basis were converted to an hourly basis based on the premise that there are 8 working hours per day, 5.5 working days a week, and 24 working days per month.

4. Consumer Price Index Data

Once hourly figures were calculated based on the wage rate data discussed above, the wages were adjusted to the Base Year on the basis of the CPI for each country, as reported by the IMF’s *International Financial Statistics*. This adjustment was made for any wage rate data not reported for the Base Year.

5. Exchange Rate Data

The base year wage rate data and the CPI-adjusted wage rate data, which are denominated in each country’s national currency, were then converted to U.S. dollars using Base Year period-average exchange rates reported by the IMF’s *International Financial Statistics*.

Thus, using (i) wage data, (ii) CPI data and (iii) exchange rate data, discussed above, the Department arrived at hourly wages, denominated in U.S. dollars and adjusted for inflation or deflation for each country for which all the above data are available.

6. Elimination of Obviously Erroneous Data

Finally, once all data had been adjusted using CPI, if necessary, and converted to U.S. dollars per hour, the Department eliminated values that could not possibly be reflective of actual wage levels and values that vary in either direction in the extreme from year to year (and which likely reflect errors in the original source data).

G. The Department's Use of GNI Data

After the Department derived wage rates from the market economy countries, for purposes of its regression based methodology, the Department also had to derive Base Year GNI data for each of those countries, as reported by the WB. The GNI data were denominated in U.S. dollars current for the Base Year. The WB defines GNI per capita as equivalent to gross national product ("GNP") per capita, which is the "dollar value of a country's final output of goods and services in a year divided by its population."

H. The Details of The Department's Regression Based Methodology

Finally, once the Department was satisfied it had all of the market economy wage rate information and the GNI figures that it needed for its calculations, the Department conducted its linear, ordinary least squares regression analysis using the Base Year wages per hour in U.S. dollars discussed above and Base Year GNI per capita in U.S. dollars to arrive at the following equation: $Wage_{i} = Y\text{-intercept} + X\text{-coefficient} * GNI$. The X-coefficient describes the slope of the line estimated by the regression analysis, while the Y-intercept is the point on the Y-

axis where the regression line intercepts the Y-axis. The results of this regression analysis describe generally the relationship between hourly wages and GNI.

The Department then applied the NME Base Year GNI to the equation presented above to arrive at an estimated wage rate for the PRC.

I. The Department’s Revised Wage Rate Methodology is Consistent With Sections 773(c) (1) and (4) of the Act

The Court directed the Department, should it conclude upon remand that it is necessary to use a surrogate value for wage rates derived from its regression methodology, to “adequately explain (and) support its use of the regression methodology in this case.” *See Harmoni Spice* at 41, n. 30. In other words, the Court directed the Department to explain why its chosen surrogate value is reasonable and how it is consistent with the statutory language of sections 773(c)(1) and (4) of the Act.

1. The PRC Surrogate Wage Rate Value, As Calculated by the Revised Methodology, is the “Best Available Information” in Accordance with Section 773(c)(1) of the Act

Section 773(c)(1) of the Act provides that “the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority.” *See* section 773(c)(1) of the Act. We explain here why we believe this methodology yields the best available information to value labor in a market economy country or countries considered to be appropriate. Without question, as explained in detail above, the valuation of the labor FOP necessitates an analysis that differs from the valuation of other factors. The use of a surrogate wage rate derived from a single surrogate country would fail to account for the large amount of variability between countries as a result of labor policies largely based on the social and political

policies described above. On the other hand, the Department’s regression based methodology is a variable average, which smoothes out the variations in the data, and ties the estimated wage rate directly to a “hypothetical” market economy at a similar level of economic development as the PRC, as measured by GNI, thus providing a surrogate wage rate that is as accurate as possible.

This is significant, because the wage rate in any given country, including India, can be a highly variable figure that may increase or decrease year-to-year. This is demonstrated by the below chart which shows that India’s labor rate has, since 1998, varied year-to-year by a range of -17.29% to +47.81%.

Table 2
Indian Wages from ILO¹²

Country	Currency	1998	1999	98-99% Change	2000	99-00 % Change	2001	00-01 % Change
India	Rupees	1211	1549	27.86%	1281	-17.29%	1893	47.81%

The Department is able to avoid the inevitable variability in the underlying ILO data through the regression-based methodology for estimating wage rates due to the availability of reliable wage rate data and the consistent relationship between wage rates and GNI over time. Under this methodology, the value for labor would be the same in every antidumping proceeding involving the PRC in a given year, because wage rates are not case specific, but cut across the whole of the PRC economy. This methodology therefore enhances the fairness and predictability of the Department’s calculations.

¹² From Chapter 5B of the ILO Yearbook of Labour Statistics, Indian “earnings” for “men and women” with sub-classification “total,” consistent with The Department’s methodology described above.

Furthermore, the Department's revised regression methodology uses a large basket of countries with different social and political systems and differing labor policies. Using this large amount of data "minimizes the effects of any single data point and, thereby, better captures the global relationship between wages and GNI. More data are, therefore, better than less data for the purposes of the Department's regression analysis," provided that the data meet the suitability requirements described above. *See Revised Methodology Notice*, 71 FR at 61722.

Relative "basket" size would not be such a critical factor if there were a perfect correlation between GNI and wage rates. If this were the case, a precise regression line could be derived from suitable data from only two countries. However, while there is a strong world-wide relationship between wage rates and GNI, there is nevertheless sufficient variability in the data to negate the use of data limited to a single country. For example, in the data relied upon for the Department's 2003 calculation for purposes of this remand, observed wage rates did not increase in lockstep with increases in GNI in the countries with GNI less than U.S. \$1,000: *e.g.*, Nicaragua, with a GNI of U.S. \$760, had reported a wage rate of US \$0.89 per hour, while Sri Lanka, with a GNI of U.S. \$950, had reported a wage rate of US \$0.34 per hour. *See Attachment 1(2003 Expected Wages of NME Countries, Wages and GNI Per Capita in 2003 US Dollars)*. Therefore, the Department finds that the regression methodology used to calculate wage rates significantly enhances the accuracy, fairness, and predictability of our antidumping calculations in NME cases. By combining data from more than one country, the regression methodology yields a more accurate result and is fairer, because the valuation of labor will not vary depending on which country the Department selects as the selected market economy surrogate country.

In addition, the Department's revised regression methodology is specifically tied to the

PRC's own GNI.¹³ Therefore, the wage rate derived from the Department's calculations is more specific to the PRC than the rates offered by the Respondents on the administrative record.

Furthermore, a single wage rate from the selected surrogate country may be affected by year-on-year inclusion or exclusion of any one data point because countries do not necessarily report data to the ILO every year. India for example, did not report a suitable 1999 and 2000 wage rate to the ILO, as evidenced by the Department's need to inflate 1998 data for the September 2003 calculation of expected NME wages based on 2001 data. *See* <http://ia.ita.doc.gov/wages/01wages/01wages.html>. However, because of the volatile and unpredictable nature of labor markets, the Department's methodology is calculated on an annual basis to ensure that the surrogate value for labor is reflective of the labor experience of the NME for that period. Thus, the Department's methodology is both contemporaneous with the experience of the NME country during the period for each proceeding and not impacted by the unique labor experience of a single surrogate country. Were the Department to utilize a single economically comparable country (in the instant case India), it would be required to inflate the single wage rate used to a value that, given the nature of labor, may not adequately reflect the contemporaneous experience of the surrogate country.

Accordingly, for all of these reasons, the Department has concluded that the wage rate

¹³ To the extent the regression methodology relies on the GNI of an NME, The Department finds that each NME's GNI, as published in the World Bank Indicators, is the "best available" metric for establishing economic comparability for all surrogate values, including labor. There are no other sources or metrics available which would be untainted by the non-market nature of the economy underlying an NME's GNI, nor has such a metric been suggested. Further, an NME's GNI is the metric that the Department routinely uses in NME cases to establish economic comparability of the surrogate country used to value all other surrogate values. Given that there is no better source available or suggested by parties, The Department finds no reason to deviate from its practice of relying on the PRC's GNI in this case. Though the Department cannot ensure that each NME's GNI is untainted from any non-market influence, it can at least rely on third parties such as the World Bank, which is a highly reputable intergovernmental organization with reliable data collection methods.

derived from its revised regression methodology is the “best available information” on the record for valuing the PRC Respondents’ labor FOP on the administrative record, in accordance with section 773(c)(1) of the Act.

2. China’s Surrogate Value Wage Rate As Calculated by the Revised Methodology is Consistent with the Text of Section 773(c)(4) of the Act

Section 773(c)(4) of the Act states that the Department “shall utilize, to the extent possible” surrogate values from “one or more market economy countries that are (A) at a level of economic development comparable to that of a nonmarket economy country; and (B) significant producers of comparable merchandise.” As a preliminary matter, the Department’s methodology does “utilize” wage rate and GNI data derived from countries (including India) that are “at a level of economic development comparable” to China and that are “significant producers” of garlic. Thus, there is no question that the Department’s methodology has satisfied the requirements of the explicit text of this provision.

The Act is silent, however, as to the appropriateness of the Department’s use of additional data from countries that are not at a level of economic development comparable to the PRC or are not significant producers of comparable merchandise. In this case, the Court did not believe that the Department reasonably explained why it used additional information on the administrative record to derive a PRC wage rate, and ordered the Department on remand to explain the reason why its use of the regression methodology to calculate the labor wage rate was supported by sufficient evidence. *See Harmoni Spice* at 41. For all of the reasons described above, on remand the Department has explained the inadequacies of using a single surrogate value wage rate and the superiority of using information that goes “beyond” the comparable market economy data.

The Department's conclusion that its regression based methodology is the best available information on the record is reasonable and supported by the information on the administrative record. This methodology differs from the Department's standard FOP methodology, but the Federal Circuit has recognized that the Act does not "say anywhere that the factors of production must be ascertained in a single fashion," see *Lasko Metal Prods. v. United States*, 43 F.3d 1442, 1446 (Fed. Cir. 1994) ("*Lasko*"), and has stressed that the critical question is whether the methodology used by the Department in deriving a surrogate value is based on the best available information and establishes antidumping margins as accurately as possible. See *Shakeproof Assembly Components Div. of Ill. Tool Works vs. United States*, 268 F. 3d 1376, 1382 (Fed. Cir. 2001) ("*Shakeproof*"). In fact, the Federal Circuit has also concluded that section 773(c)(4) of the Act "does not preclude consideration of pricing or costs beyond the surrogate country if necessary." See *Nation Ford Chemical Co. v. United States*, 166 F. 3d 1373, 1378 at n. 5.

The Department's methodology addresses variability in wage rates between comparable economies, while at the same time acknowledging the strong relationship between GNI and wage rates. Thus, to the extent that the Department's methodology must consider economically comparable countries, the Department's methodology does this through its use of other countries' GNI. Further, through the use of a number of parameters in deriving wage data from the ILO *Yearbook of Labour Statistics* Chapter 5B, the Department considers other measurements of comparability in deriving a wage rate on a country-by-country basis, including the gender, age and experience of workers and types of industries represented by reported wage rates. Thus, many of the countries that might not be considered "comparable" under the Department's normal measurement of economic comparability might nonetheless be considered

“comparable” to China with respect to the factors that influence labor policy and wage rates. Accordingly, to the extent that section 773(c)(4) requires that the Department derive a surrogate value for labor from an economy comparable to the PRC, the Department’s methodology derives data from economies that are comparable based on GNI.

With respect to the “significant producer” requirement of section 773(c)(4) of the Act, no evidence on the record shows a relationship between a country’s labor rates and its production of garlic, specifically. Although there are some industries in which a product may be produced only by a limited number of highly skilled and educated individuals, the garlic production experience of all the Respondents to this proceeding does not reflect this in the case at hand. Thus, to the extent that the Department has used wage rate data from countries that are both producers of comparable merchandise and countries that do not produce comparable merchandise, the Department’s use of data “beyond” that described in the Act is both logical and permissible.

All of the wage data of each country used in the calculation are based on consistent parameters to arrive at a single wage rate that represents the broadest possible measure of wages. By using a number of consistent parameters to calculate the single wage rate of each country, the Department is able to obtain a single wage rate that is reflective of the broad labor experience of that country. To not use data from many of these countries merely because they do not produce the particular subject merchandise being reviewed is illogical, and there is nothing within section 773(c)(4) of the Act that would require such an unreasonable restriction on the use of otherwise helpful and appropriate datasets by the Department. In the words of the Act itself, to reject such

data from the Department’s otherwise reasonable analysis would make it impossible to use the “best information available” on the record.

J. Conclusion

Accordingly, the Department’s chosen datasets and overall revised regression methodology is reasonable, consistent with the requirements of sections 773(c)(1) and (4) of the Act, and otherwise supported by the evidence on the administrative record. Furthermore, in accordance with the Court’s order, the Department has explained on remand in great detail the necessity of using this methodology in deriving the best available surrogate value for a PRC wage rate on the administrative record. This very same methodology has already been affirmed by the CIT in *Wuhan Bee Healthy Co v. United States*, Slip Op. 08-61 (CIT 2008), at 3-9 and *Zhejiang Native Produce & Animal By-Products Import and Export Group Corp. v United States*, Slip Op. 09-61 (CIT 2009), at 11-13. Thus, consistent with these CIT decisions, this Court should affirm the Department’s use of its revised regression analysis in this redetermination pursuant to remand as supported by substantial evidence on the record and otherwise in accordance with law.

3. Reconsideration of the data source used in estimating ocean freight costs

For the *Final Results*, the Department had calculated surrogate values for Respondents’ ocean freight costs using price quotes for the shipment of refrigerated containers published by Maersk Sealand (“Maersk”). The Court remanded the use of the Maersk rates to the Department for redetermination on the grounds that they reflected rates for shipping routes that no respondent used, (*i.e.*, Qingdao-to-Hong Kong-to-U.S.), as well as the fact that they contained additional charges that Respondents claim not to have paid (*i.e.*, the Maersk rates included a “PRC arbitrary

charge” of \$1,200 per container). *See Harmoni Spice (CIT 2009)*, 617 F. Supp. 2d at 1307-08. The Court additionally rejected Maersk as a surrogate value source because it is not specific to the shipment of fresh garlic but, rather, provides a general cargo rate for a single carrier, whereas the Descartes data, as the Court notes, are not only specific to the shipment of refrigerated garlic, but also reflect the rates of many carriers. *See Harmoni Spice (CIT 2009)*, 617 F. Supp. 2d at 1307-12. The price data obtained from the Descartes Carrier Rate Retrieval Database (“Descartes”) that the Department is using on remand to recalculate surrogate values for ocean freight are based on routes that more closely correspond to routes used by Respondents, avoiding Hong Kong altogether, and, they are free of any additional fees or charges not incurred by Respondents.

On remand, we reconsidered all the data sources on the record, *i.e.*, Maersk, Descartes, the Evergreen Marine Corporation (“Evergreen”) and ranged freight rates, and we have determined that the best available information with which to value ocean freight is price data obtained from the Descartes database for routes between the PRC and both the East and West coasts of the United States. The Descartes database is a web-based service, accessible via paid subscription, which publishes the ocean freight rates of numerous carriers. In addition to being publicly available, the Descartes data are further suitable for surrogate value estimation as they reflect rates for multiple carriers for every month throughout the POR. Moreover, the Descartes data contained in the record plainly note that the provided ocean freight rate estimates are for refrigerated garlic, thus satisfying the Department’s requirements for product specificity. For the *Final Results*, the Department initially rejected the Descartes database as a surrogate value source because the data did not appear to be publicly available. Upon reexamination, we found

that the Descartes database is accessible to government agencies without charge in compliance with Federal Maritime Commission regulations and, as such, the Department is able to verify the Descartes values Respondents placed on the record.

The Department rejects the use of public versions of market economy ocean freight rates paid by certain Respondents for the reasons discussed below. *See* Letter regarding: Second Surrogate Value Submission of Respondents: Administrative Review of Fresh Garlic from the People’s Republic of China (A-570-831), dated January 5, 2006, at Exhibit VI. As the Department stated in the course of the review, the actual paid ocean freight expense data are based on proprietary information, and for that reason are ranged within plus or minus 10 percent of the actual data. *See Final Results; see also Issues and Decision Memorandum.* Thus, the ranged data on the public record are either inflated (*i.e.*, ranged upward 10 percent) or deflated (*i.e.*, ranged downward 10 percent) in order to protect the underlying business proprietary information. *See* 19 CFR 351.304.

The Department prefers to draw its surrogate value sources from public information whenever possible. The ranging of the proprietary information detracts from the public verifiability of the data used in surrogate value calculations. *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). As explained in Policy Bulletin 04.1, it is the Department’s general practice “to use investigation or review period-wide price averages, prices specific to the input in question, prices that are net of taxes and import duties, prices that are contemporaneous with the period of investigation or review, and *publicly available data* {emphasis added}.” The Department, in accordance with its

long-standing policy, uses ranged data only when no better alternatives are found, because as the underlying sources of the ranged values are considered proprietary, the ranged data are not publicly verifiable. Because the Descartes data are publicly available, specific to the costs incurred by Respondents, and contemporaneous with the period of review, there is no need to resort to use of the ranged data from other Respondents.

The Department additionally rejects the Evergreen data as a source for surrogate values for ocean freight. While the Evergreen data also reflect prices for refrigerated cargo, the Descartes data reflect prices for refrigerated cargo includes “fresh fruit and vegetables.”¹⁴ As the Descartes data on the record present contemporaneous data that better match the product in question than any of the other record data sources, the Department finds no need to value ocean freight using less product-specific data. Upon reassessment, considering the public availability of the Descartes data, we now find that the Maersk data is less reflective of the Respondents’ experience than the Descartes data.

4. Reconsideration of the valuation of surrogate values for packing cartons

In the *Final Results* the Department valued the cardboard cartons Respondents used for packaging and transport using Indian import statistics for Indian HTS subheading 4819.1010, obtained through the World Trade Atlas (“WTA”). During the course of the review Chinese Respondents submitted “trade intelligence data” from Eximkey.com, indicating that Indian HTS 4819.1010 included certain specialty packing products Chinese producers claim not to have used. Additionally, Respondents claim that Indian HTS subheading 4819.1010 includes products that, unlike those Respondents used, were shipped by air. *See Final Results* at 65. The Court

¹⁴ See Second Surrogate Value Submission of Respondents: Administrative Review of Fresh Garlic from the People’s Republic of China (A-570-891), submitted on January 5, 2006, at Exhibits VI, VII and VIII.

instructed the Department to re-evaluate the data used in constructing the surrogate value for packing cartons. *See Harmoni Spice*, 617 F. Supp. 2d at 1321. Specifically, the Court stated that the Department did not explain and justify its conclusion that the surrogate value it used to value cartons in this segment of the proceeding was the best available information. *See id.* at 1312.

The only other data sources on the record for this review are four Indian price quotes for cartons submitted by the Respondents. However the Respondents did not provide any information detailing the requestor of the price quotes, the circumstances under which the price quotes were requested, any other terms that might be associated with the quotes, or any information on the companies providing the price quotes. We continue to find the four price quotes Respondents submitted to be inadequate sources for the valuation of cartons because they do not meet the Department's criteria for determining the reliability and appropriateness of surrogate values for use in an antidumping proceeding.

The Department has a well-established practice for determining the reliability and appropriateness of surrogate values under consideration. With respect to surrogate value selection, "it is the Department's stated practice to use investigation or review period-wide price averages, prices specific to the input in question, prices that are net of taxes and import duties, prices that are contemporaneous with the period of investigation or review, and publicly available data." *See Policy Bulletin 04.1*, available at <http://ia.ita.doc.gov/policy/bull04-1.html> ("*Policy Bulletin 04.1*"). The price quotes that Respondents submitted fail to meet a number of the criteria that the Department relies upon to establish surrogate values. Specifically, the price quotes are not publicly available, not contemporaneous, and are not representative of prices throughout the POR.

The price quotes do not meet the criteria of public availability that the Department has historically relied upon when choosing appropriate surrogate values in order to reduce the possibility of manipulation. Since the Chinese producers claimed to purchase their cartons only through domestic channels, it can be inferred that the submitted price quotes are documents prepared specifically upon request and not generated in response to a request made by the Respondents in the normal course of business. Further, on the record of this review there is no information as to the relationship between the Respondents and the providers of the price quotes. Nor is there information about who requested the quotes and under what circumstances the price quotes were obtained. Without such additional information on the record, the Department cannot assess the accuracy or completeness of the submitted quotes.

Moreover, there is no record evidence to indicate where the price quotes fall in the spectrum of price quotes that might have been offered by these companies. In addition, price quotes are easily manipulated and a respondent could selectively decide to submit only those price quotes that are favorable to it while not submitting all price quotes it received. This would lead to distorted results. Without information on how the data were obtained (including the sources and any adjustments that may have been made), it is impossible to confirm that the data are complete and/or representative of prices in the Indian market during the POR.

Further, the record does not demonstrate that the submitted price quotes are representative of carton prices during the POR. Only four price quotes were obtained, and they are all dated within two days of one another, leaving the quotes highly susceptible to temporary market conditions. In fact, of the two price quotes that are legible, one includes a note that the quote is only valid for a limited time, indicating that there are price fluctuations in the prices

quoted for cartons.¹⁵ The price quotes submitted by Respondents were all dated June 19-20, 2003. The Department has historically chosen to use surrogate values that reflect broad market averages and that cover a substantial time period over price data that are obtained from so isolated a time frame as to be subject to temporary market fluctuations. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 42672, 42684 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004) (“*Warmwater Shrimp*”).

This Court has previously held that it is within the Department’s discretion to choose Indian import data on the record over domestic, respondent-submitted price quotes. In *Jinan Yipin Corporation, Ltd. and Shandong Heze International Trade and Developing Company v. United States*, 637 F. Supp. 2d 1183, 1196 (Ct. Int’l Trade 2009) (“*Jinan Yipin II*”), the Court acknowledged the deficiencies of the price quotes submitted by Respondents, as well as those of import statistics, but stated that it is within the Department’s discretion to choose between two imperfect data sources. Thus, to the extent that the Court found *Jinan Yipin Corporation v. United States*, 526 F. Supp. 2d 1347, 1376-79 (Ct. Int’l Trade 2007) (“*Jinan Yipin I*”) persuasive (*see Harmoni Spice*, 617 F. Supp. 2d at 1321), the Court may find equally persuasive this Court’s affirmance of the Department’s rejection of the price quotes in *Jinan Yipin II*, 637 F. Supp. 2d at 1196. As long as there are other data sources on the record that, overall, better meet the

¹⁵ See Letter from Grunfeld, Desiderio, Lebowitz, Silverman and Klestadt, LLP, regarding: Surrogate Value Submission of Respondents: Administrative Review of Fresh Garlic from the People’s Republic of China (A-570-831), dated March 31, 2005, at Exhibit 17, p. 2.

Department's criteria with respect to representing a broad market average, public availability, specificity and contemporaneity, the Department is obliged to use the better data source over price quotes as a surrogate value.

The Department has also rejected the use of price quotes over Indian import statistics where the import statistics better meet the Department's criteria as discussed above. In *Synthetic Indigo from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 68 FR 53711 (September 12, 2003) ("*Synthetic Indigo*"), and accompanying Issues and Decision Memorandum at Comment 11, the Department found Indian import statistics were preferable to price quotes of Indian suppliers. We found in that review that, consistent with our past practice, the Indian import statistics constituted the best available information on the record because they were contemporaneous with the POR, representative of a range of prices during the POR, and sufficiently specific to the input being valued. In *Synthetic Indigo*, the Department acknowledged that the import category was not as product-specific as the price quotes for plastic bags; however, in that case, we were not able to determine that the quotes, which suffered from the same flaws as the price quotes in this review, were representative of the range of prices for the input during the POR. See *Synthetic Indigo* at 20.

During the course of the administrative review, the Department used Indian import statistics to establish a surrogate value. India is considered to be at a level of economic development similar to that of the PRC and, as such, is typically the Department's first choice when establishing surrogate values with import statistics. While the Indian import data in this case are less specific, the price quotes do not provide reliable summaries of actual, completed sales, do not represent broad market averages and for the other reasons discussed above, cannot

be considered by the Department as the best available information with which to establish a surrogate value. In addition, while the Indian import data may include airfreight, the Department placed import data from Indonesia, Sri Lanka, the Philippines and Morocco on the record which demonstrates that the Indian import statistics fall within the range of prices obtained from other comparable countries. While the new data, placed on the record by the Department, had prices for cartons ranging from \$1.05 to \$2.97 per kilogram, the average Indian import price was about \$2.20 per kilogram.

While the Department acknowledges the fact that the data obtained through Indian import statistics do not perfectly represent the inputs of Respondents because the Indian import data include specialty boxes and boxes transported by air, and that this can have a distortive effect, the Department considers the problems inherent with price quotes, and the specific deficiencies of the price quotes submitted for this review, to be far more problematic. Thus, the Department continues to find the import statistics to be the best available information in light of the potential for manipulation inherent in accepting the limited price quotes on the record of this redetermination on remand.

In light of the reasoning in both *Jinan Yipin I* and *Synthetic Indigo*, and the factual considerations of the current review, we continue to find Indian HTS number 4819.1010 to constitute the best available information because the data are publicly available, contemporaneous with the POR, representative of a range of prices throughout the POR, and sufficiently specific to the product.

5. Reconsideration of the surrogate values for plastic jars

In the *Final Results*, the Department valued Respondents' plastic jars using Indian import statistics for Indian HTS subheading 3923.3090, obtained through the WTA. Respondents argued that Indian HTS subheading 3923.3090 included a broad range of materials, notably "specialty jars" and other products that, Respondents claim, are substantially different from the plastic jars used to pack garlic. *See Final Results* at 66. The Court instructed the Department to re-evaluate the data used in constructing the surrogate value for plastic jars and lids. *See Harmoni Spice*, 617 F. Supp. 2d at 1327. Specifically, the Court stated that the Department did not explain and support its conclusion that the surrogate value it used to value plastic jars and lids in this segment of the proceeding was the best available information. *See Harmoni Spice*, 617 F. Supp. 2d at 1321.

During the administrative review there was only one other potential surrogate value source for jars on the record: three price quotes for plastic jars obtained from three Indian vendors and submitted by Respondents. At the time of the review we found the price quotes were not to be the best source of information on the record. As stated previously with regard to cartons, the price quotes that Respondents submitted fail to meet a number of the criteria that the Department relies upon to establish surrogate values. *See Policy Bulletin 04.1*. Specifically, the price quotes are not publicly available, not contemporaneous, and are not representative of prices throughout the POR.

The price quotes do not meet the criterion of public availability that the Department has historically relied upon when choosing appropriate surrogate values in order to reduce the possibility of manipulation. Since the Chinese producers claimed to purchase their jars and lids only through domestic channels, it can be inferred that the price quotes submitted are documents

prepared specifically upon request and not generated by the Indian producers in response to a request made in the normal course of business by Respondents. There is no information on the record of this review as to the relationship between the Respondents and the providers of the price quotes. Nor is there information about who requested the quotes and under what circumstances the price quotes were obtained. Without such additional information on the record, the Department cannot assess the accuracy or completeness of the submitted quotes. Moreover, there is no record evidence to indicate where the price quotes fall in the spectrum of price quotes that might have been offered by these companies. In addition, price quotes are easily manipulated and a respondent could selectively decide to submit only those price quotes that are favorable to it while not submitting all price quotes it received. This would lead to distorted results. Without information on how the data were obtained (including the sources and any adjustments that may have been made), it is impossible to confirm that the data are complete and/or representative of prices in the Indian market during the POR.

Further, the record does not demonstrate that the submitted price quotes are representative of plastic jar and lid prices during the POR. One of the submitted price quotes falls at the end of the POR, while the other two price quotes are dated after the end of the POR. And, while the quotes for the plastic jars and lids span a more extended period than the carton price quotes, only three price quotes were provided. The Department has historically chosen to use surrogate values that reflect broad market averages and that cover a substantial time period over price data that are obtained from so isolated a time frame as to be subject to temporary market fluctuations. *See Warmwater Shrimp.*

This Court has held that it is within the Department's discretion to choose Indian import

data on the record over domestic, respondent-submitted price quotes. *See Jinan Yipin II* at 25. The Court acknowledged the deficiencies of the price quotes submitted by Respondents, as well as those of import statistics, but stated that it is within the Department's discretion to choose between two imperfect data sources. *See id.* Thus, to the extent that the Court found *Jinan Yipin I* persuasive with regard to cartons (*See Harmoni Spice*, 617 F. Supp. 2d at 1321), the Court may find equally persuasive this Court's affirmance of the Department's rejection of the price quotes in *Jinan Yipin II*. As long as there are other potential data sources on the record that, overall, better meet the Department's criteria with respect to representing a broad market average, public availability, specificity and contemporaneity, the Department is obliged to use the better data source over price quotes as a surrogate value.

The Department has also rejected the use of price quotes over Indian import statistics. In *Synthetic Indigo*, and accompanying Issues and Decision Memorandum at Comment 11, the Department found Indian import statistics were preferable to price quotes of Indian suppliers. We found in that review that, consistent with our past practice, the Indian import statistics constituted the best available information on the record because they were contemporaneous with the POR, representative of a range of prices during the POR, and sufficiently specific to the input being valued. In *Synthetic Indigo*, the Department acknowledged that the import category was not as product-specific as the price quotes for plastic bags. However, we were not able to determine that the quotes, which suffered from the same flaws as the price quotes in this review, were representative of the range of prices for the input during the POR. *See Synthetic Indigo* at 20.

During the course of the administrative review, the Department used Indian import

statistics to establish a surrogate value. India is considered to be at a level of economic development similar to that of the PRC and, as such, is typically the Department's first choice when establishing surrogate values with import statistics. While the Indian import data in this case are less specific, the price quotes do not provide reliable summaries of actual, completed sales, and cannot be considered by the Department as the best available information with which to establish a surrogate value. As noted in the previous section with regard to cartons, the Department placed import data from Indonesia, Sri Lanka, the Philippines and Morocco on the record which demonstrates that the Indian import statistics are non-aberrational, despite the inclusion of air freight, and fall within the range of prices obtained from other comparable countries. While the new data, placed on the record by the Department, had prices for jars and lids ranging from \$1.40 to \$6.36 per kilogram, the average Indian import price was about \$4.40 per kilogram.

While the Department acknowledges that the data obtained through Indian import statistics may not perfectly represent the inputs used by respondent because the Indian import data include products that are different than those used by Chinese producers to pack garlic, and products shipped by air, the Department considers the problems inherent with price quotes, and the specific deficiencies of the price quotes submitted for this review, to be far more problematic. Thus, the Department continues to find the import statistics to be the best available information given the potential for manipulation inherent in accepting price quotes.

In light of the reasoning in both *Jinan Yipin I* and *Synthetic Indigo*, and the factual considerations of the current review, we continue to find Indian HTS numbers 3923.3090 to constitute the best available information because the data are publicly available,

contemporaneous with the POR, representative of a range of prices throughout the POR, and sufficiently specific to the product.

D. Comments

Comment 1: Time granted for response

In their comments on the *Draft Redetermination of Harmoni Spice*, Respondents note that they requested a one-week extension of time to comment on the *Draft Redetermination of Harmoni Spice*. See GDLSK Comments at 2. The Department granted their request in part, allowing parties to comment on the *Draft Redetermination of Harmoni Spice* by March 19, 2010. The Respondents state in GDLSK Comments that the total nine days the Department provided to comment on the *Draft Redetermination of Harmoni Spice* was inadequate.

Department's Position:

While we did not grant Respondents' extension request in full, we did grant a partial extension, allowing for a total of nine days for parties to comment on the *Draft Redetermination of Harmoni Spice*. We further note that, while there was new surrogate value data placed on the record by the Department over the course of the redetermination, all of the new data was placed on the record as of July 6, 2009. This left over eight months for parties to familiarize themselves with the new information. As such, parties had ample time to familiarize themselves with the data in question.

Comment 2: Valuation of garlic bulb

The Respondents claim that the grades of garlic the Department has used to value Respondents' garlic bulb are not described by any unbiased sources on the record. Specifically, Respondents argue that the *Market Research Report*, as a private study commissioned by

petitioners in the underlying review, is not an objective source. *See* GDLSK Comments at 3.

The Respondents further argue that the only record evidence indicating that “S.A.” grade garlic actually stands for “Super-A” are statements made by petitioners. *See* GDLSK Comments at 3.

Respondents go on to claim that there is no record evidence to indicate that the higher prices for these grades, as compared to “B” and “C” grade garlic, are attributable to size alone. *See*

GDLSK Comments at 4. Respondents note that the *Market Research Report* lists the price of Chinese garlic imported into India as being far less expensive than the prices listed in the APMC bulletin. As such, Respondents assert, there must be other factors inflating the price of large bulb garlic at the Azadpur APMC. *See* GDLSK Comments at 4.

Respondents further argue that the Department should not rely upon domestic Indian prices for large bulb garlic in valuing Respondents’ intermediate garlic input. Respondents argue that the higher cost of “A” and “Super-A” garlic is likely caused by the use of garlic seed specially designed to produce a larger bulb. As Respondents claim not to have required specially designed garlic to produce their large-bulbed product, Respondents argue that the use of prices that, they assert, may incorporate the cost of specially designed seed unfairly distorts their dumping margins. *See* GDLSK Comments at 5.

Respondents also claim that, as the Azadpur APMC is India’s largest produce market, the APMC price bulletin does not reflect “farmgate” (*i.e.*, straight from the farm to the customer, without intermediary distributors) prices. Since it is impossible to determine how many intermediate distributors were involved in the sale of any given quantity of garlic at the APMC or what kind of transportation costs were included in that sale price, Respondents argue that the APMC price data is not representative of Respondents’ production experience. Respondents

allege that the APMC prices reflect sales by produce brokers after the garlic “has been transported extremely long distances” to reach the APMC market. Further, they claim that “none” of the “A” and “Super-A” grade garlic was grown locally to the Azadpur market.

Respondents also argue that the Azadpur APMC price bulletin is not a broad-based source, as it covers prices from only a few months for only one market. Respondents further argue that, while the APMC data indicate that 50 tons of garlic may arrive a day, this information is not broken down by grade. Thus, Respondents claim, there is no indication of what quantity of “A” and “Super-A” garlic arrives every day. Respondents go on to state that, since the amounts listed on the APMC price bulletin merely note the quantity of produce arriving, not the quantity of produce sold, the Azadpur APMC price bulletin must be unreliable. *See* GDLSK Comments at 8.

Respondents claim that the APMC bulletin is not publicly available. While the Department stated in the *Draft Redetermination of Harmoni Spice* that the APMC price bulletin is available on line, the Respondents claim that there is no record evidence to support this. The Respondents further argue that the APMC price data have been “cherry-picked,” as they do not represent a full year’s worth of data and are published only six days a week. *See* GDLSK Comments at 9.

Finally, Respondents argue that there is no indication that the APMC prices are tax exclusive. Additionally, Respondents note that, while the *Draft Redetermination of Harmoni Spice* states that the APMC prices were adjusted to subtract the APMC’s 6-percent marketing fee, no such deduction was made in the calculation.

Department’s Position:

The Department finds Respondents' argument that there is no record evidence to indicate that the "S.A." designation in the Azadpur APMC price lists does, in fact, represent "Super-A" grade garlic to be without merit. We have, in multiple reviews, found "S.A." to denote "Super-A" grade garlic.¹⁶ Before Respondents' arguments in this remand determination, no party in this proceeding has ever suggested that "S.A." might stand for anything other than "Super-A." Further, the use of "Super-A" grade garlic in other reviews was discussed multiple times throughout the course of this redetermination.¹⁷ We note that Petitioners also stated that "S.A." stands for "Super-A" grade garlic.¹⁸ At the time, no party disputed that statement, nor did any party present evidence to indicate that it was not correct. Accordingly, we find Respondents' claim in this regard to be unsupported. Even if the "S" in "S.A." did not stand for "super," the Respondents have also not provided any evidence to counter the descriptions of the size of "S.A." grade garlic – the key factor for purposes of our analysis – no matter the actual meaning of the term "S.A."

Further, the Department notes that the Court urged the Department to select a surrogate value from a "long day" growing region (*i.e.*, the area of India above 30 degrees north latitude), where, according to Respondents' own statements, growing conditions and garlic bulb production are similar to those experienced by Chinese producers. *See Harmoni Spice* at 28.

¹⁶ See *Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of Eleventh Administrative Review and New Shipper Reviews*, 72 FR 34438 (June 22, 2007); see also *Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the Twelfth Administrative Review*, 73 FR 34251 (June 17, 2008); *Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the Thirteenth Antidumping Duty Administrative Review and New Shipper Reviews*, 74 FR 29174 (June 19, 2009).

¹⁷ See Letter from Program Manager to Interested Parties re: new surrogate value information, dated June 5, 2009; see also Letter from Program Manager to Interested parties re: further new surrogate value information, dated July 6, 2009; Letter from Kelley, Drye and Warren, LLP, re: Redetermination Pursuant to Court Order, dated June 24, 2009, at 4.

¹⁸ Letter from Kelley, Drye and Warren, LLP, re: Redetermination Pursuant to Court Order, dated June 24, 2009, at 4.

According to the *Market Research Report*, this primarily includes the Indian states of Himachal Pradesh, Punjab, and Uttaranchal, as well as parts of the Indian states of Haryana and Uttar Pradesh. *See Market Research Report* at 10. The Department notes that the Azadpur APMC dataset we are using to generate a surrogate value for Respondents' intermediate input garlic bulb is overwhelmingly made up of garlic grown in those regions and, as such, is the best value on the record for fulfilling the Court's requirements for garlic bulb valuation.

The Department further disagrees with Respondents' argument that the APMC prices for "A" and "Super-A" grades of garlic are too high to be attributable to size alone. Respondents cite the *Market Research Report* at length to demonstrate a supposed disparity between the price of large-bulbed Chinese garlic imported into India and the prices offered at the APMC for "A" and "Super-A" grade garlic. However, the *Market Research Report* was compiled in 2003. The "A" and "Super-A" prices were drawn from a 2006 data set. The Department cannot presume that the APMC price bulletin is inaccurate as a surrogate value source simply because it does not offer prices identical to those sampled three years earlier. Even if the Department were to presume that the "A" and "Super-A" values are for imported Chinese garlic – an assumption Respondents make based upon no direct record evidence – there are a number of factors that could explain the difference in prices, including increases or decreases in the volume of Chinese imports caused by distortions or market shocks in the domestic Chinese market. Respondents' arguments on this point are based purely on supposition without any supporting evidence.

The Department further disagrees with Respondents' contentions that the APMC bulletin data, as domestic Indian prices, are unrepresentative of Respondents' production processes. Respondents base their contention on the fact that the *Market Research Report* states that garlic

imported from China is sold at the Azadpur APMC. The reasoning Jinan Yipin, Linshu Dading, and Sunny propose is based on conjecture – there is no evidence on the record identifying in which states these specific grades of garlic are specially grown. Further, there is no evidence that all of the “A” and “S.A.” have been “transported extremely long distances to be sold in the APMC market. In addition, the Respondents’ claim that “none” of the “A” and “S.A.” garlic was grown locally is also unsupported by any evidence on the record. Accordingly, the Department is not persuaded by the Respondents’ claims on this point.

However, even if the “A” and “Super-A” grades of garlic sold at the Azadpur APMC include specially grown varieties, the Department would still not find Respondents’ argument persuasive. Section 773(c)(1) of the Act states that “the valuation of the factors of production shall be based on the best available information regarding the values of such factors....” In this case, the Department is seeking a surrogate value that is both as similar as possible to the intermediate input used by Respondents and sold in a market economy similar to the PRC. The “A” and “Super-A” Azadpur APMC garlic prices provide a surrogate value for a product that is highly similar to the intermediate input used by Respondents; indeed, they indicate that it may be the very same intermediate input that Respondents produce. *See* GDLSK Comments at 4. Respondents’ reasoning for why this surrogate value is invalid is, quite literally, “because the price is too high” and, therefore, there must be other, indeterminate factors impacting the Azadpur APMC. The Azadpur APMC “A” and “Super-A” garlic bulb prices are, according to record evidence, highly similar to Respondents’ intermediate input. The prices offered by the Azadpur APMC “A” and “Super-A” garlic bulb prices are, therefore, the best estimated value on the record for Respondents’ intermediate input in a market economy with economic conditions

similar to the non-market economy in which Respondents operate.

The same argument applies to Respondents' contention that any domestic Indian prices for garlic similar to that produced by Respondents must be from specially modified garlic seed, and is therefore inappropriate as a surrogate value. Again, there is no record information to indicate that the "A" and "Super-A" garlic grades sold at the Azadpur APMC are the product of specially designed garlic seed. However, even if the "A" and "Super-A" Azadpur APMC garlic grades were to be found to originate from such seed, the Department's reasoning would still stand. In GDLSK Comments, the Respondents state that the high quality seed used in long-day regions is the norm in China due to the pervasiveness of long-day growing conditions there, and that the Respondents produce a higher quality, larger bulb under long-day growing conditions with similar long-day seed. *See* GDLSK Comments at 5. Regardless of the price Respondents may or may not pay for the long-day seed in China that they used to generate their intermediate input, the "A" and "Super-A" grades of bulb appear to best approximate the intermediate input in India. Respondents' argument that there is a great deal of such garlic seed in China is not supported by record evidence but, more to the point, it in no way refutes the fact that the Azadpur APMC price lists are the most comparable surrogate values on the record.

We also find Respondents' allegations regarding the possible number of intermediate distributors to be without merit. There is no record evidence to suggest the pervasiveness of intermediate distributors of garlic in India.

Respondents further claim that the Azadpur APMC price bulletin is not sufficiently broad-based, as it does not reflect an entire year of sales. *See* GDLSK Comments at 7 and 8. The Department notes, as it has stated since the beginning of this redetermination, that while the

Azadpur APMC data cover two and a half months of sales, they contain a substantial quantity of garlic. *See Draft Redetermination of Harmoni Spice* at 12. There is no statutory or regulatory requirement that the Department use an entire year of sales, and the volume of sales covered by the numerous documents on the administrative record in fact supplies the Department with a much greater level of detail, for example, than the few, individual price quotes championed by the Respondents to value cartons and jars.

Respondents also counter that the overall quantity is not broken down by grade and, as such, only a “very small percentage” of garlic sales made at the Azadpur APMC consist of “A” and “Super-A” grade garlic. *See GDLSK Comments* at 7. In addition, Respondents claim that the net tonnage of garlic at the Azadpur APMC only denotes the quantity of garlic that *arrived* at the APMC, not necessarily the quantity *sold*. Like the majority of their arguments, the Respondents provide no evidence to support the claim that the garlic that arrived at the market was not sold. Further, the overall value of the garlic sold at the APMC was irrelevant – what matters is the data with respect to the “A” and “Super-A” garlic grades.

Regarding the Respondents’ arguments that the APMC data are not publicly available, we disagree. As we have noted throughout the redetermination, the APMC bulletins are available daily online at the Azadpur APMC’s website (<http://www.apmcazadpurdelhi.com/>). *See Draft Redetermination of Harmoni Spice* at 13. Further, the historical bulletins are available upon request. Again, as was stated in the *Draft Redetermination of Harmoni Spice*, the Department chose to use price data from the Azadpur APMC starting on May 1, 2006, because that was the date at which the Azadpur APMC began denoting large size garlic bulb sales into “A” and “Super-A” values, thus improving the specificity of the surrogate value the Department

has chosen for the course of the review. *See Draft Redetermination of Harmoni Spice* at 9.

Respondents continue to argue that the Department is inconsistently using surrogate values from a time period shorter than the POR itself, given that it rejected Respondents' proposed price quotes for cartons and jars. As has been discussed at length, both above in Sections 4 and 5, as well as below at Comments 4 and 5, the Department rejected not months' worth of price quotes for those inputs, but only a few *single* price quotes for those inputs. Since each price quote represented a *single* sale, they are substantially more vulnerable to abnormal market fluctuations than the hundreds of transactions offered by the Azadpur APMC price bulletin.

Respondents also argue that there is no indication that the Azadpur APMC prices are tax exclusive, and on this basis alone we should reject the surrogate value. The Department has pointed out in the past that there is also no indication that the Azadpur APMC prices are not tax exclusive. In either case, this is certainly not a reason for wholesale rejection of the most comparable surrogate value on the record. Accordingly, the Department has determined it appropriate to use the Azadpur APMC data to value the intermediate input.

Finally, the Department agrees with the Respondents that it neglected to deduct the six percent marketing fee from the final per kilogram rupee value of the Azadpur APMC data in the Draft Redetermination. This error has been corrected in the Final Redetermination.

Comment 3: Wage Rate

The Respondents argue that the Department's regression-based wage rate calculation is contrary to the language in the antidumping statute and the Court's remand instructions. While the antidumping statute requires FOPs, including labor, to be valued from a country or countries that are (A) economically comparable to the non-market economy country and (B) significant

producers of merchandise comparable to the subject merchandise in each proceeding, the Respondents state that the regression-based wage rate methodology is not calculated based on these two principles.¹⁹

The Respondents state that the Court in *Allied Pacific II* recognized these problems and concluded that 19 CFR 351.408(c)(3) does not comport with the explicit instructions contained within the antidumping statute for valuing FOPs.²⁰ In *Allied Pacific II*, the Respondents state the Court ordered the Department to find a surrogate source for valuing labor that comports with the requirements of the statute other than the invalidated regression-based wage rate methodology outlined in the Department's regulations.²¹ As in *Allied Pacific II*, the Respondents argue that the Court in *Taian Ziyang* also concluded that the regression-based wage rate methodology outlined in the Department's regulations "is inconsistent with the statutory mandate."²² Moreover, while the Court in *Harmoni Spice* has instructed the Department to be mindful of the findings of *Allied Pacific II*, the Respondents argue that the regression-based wage rate methodology used by the Department in the *Draft Redetermination of Harmoni Spice* directly conflicts with the statute. Because of the Court's findings in *Allied Pacific II* that the regression-based wage rate methodology is contrary to the requirements of the antidumping statute, the Respondents argue that the Department cannot justify the use of this methodology for this remand simply by arguing that it results in the "best available information."

Additionally, the Respondents state that the Department cannot argue that the regression-based wage rate calculation is the "best available information," despite the fact that it is contrary

¹⁹ See section 773(c)(4) of the Act.

²⁰ See *Allied Pacific Food (Dalian) Co., Ltd. v. United States*, 587 F. Supp. 2d 1330 (CIT 2008) ("*Allied Pacific II*").

²¹ See *id.*, 587 F. Supp. 2d at 1361.

²² See *Taian Ziyang*, 637 F. Supp. 2d at 1136; Respondents' Comments at 12.

to the antidumping statute, based on the legislative history.²³ Specifically, the Respondents argue that the legislative history shows that Congress intended for the “best available information” to mean information derived from countries that are both economically comparable and significant producers of comparable merchandise. According to the Respondents, Congress did not intend that the use of information from countries that are both economically comparable and significant producers of comparable merchandise was subordinate to the requirement to use the “best available information” for valuing a respondent’s FOPs. Instead, the Respondents argue that Congress intended that the requirements of section 773(c)(4) of the Act would guide the Department’s decision as to what constitutes the “best available information” (*i.e.*, information that is derived from countries that are both economically comparable and significant producers of comparable merchandise). Therefore, the Respondents contend that the regression-based wage rate calculation does not comport with Congress’s intention for how FOPs were to be calculated using the “best available information.”

The Respondents state that the Department’s argument that there is no evidence on the record that shows a direct relationship between a country’s labor rates and its production of garlic is unpersuasive. The Respondents state that the Department cannot ignore the antidumping statute’s directive to use data from a source that is a significant producer of comparable merchandise by claiming that the record does not show it to be relevant. Contrary to the Department’s argument that labor should be valued using country-wide data, the Respondents state that the most accurate wage rate would be one related to the production of comparable merchandise from the chosen surrogate country. If an industry-specific rate is not available, the Respondents propose that the next best choice would be using a country-wide

²³ See *Rodriguez v. United States*, 480 U.S. 522, 525-26 (1987).

wage rate from a country that is both a significant producer and economically comparable to the PRC.

The Respondents state that the Department's argument that the use of the regression-based wage rate calculation is justified based on the "strong correlation" between GNI and expected wage rates is unsupported. According to the Respondents, the Department contradicts this in the *Draft Redetermination of Harmoni Spice* by stating that a country's GNI is not the best indication of its wage rate.²⁴ Even if there is validity in the Department's theory, the Respondents state that the Department's reasoning does not fulfill the underlying objective of this proceeding, which is to find the most accurate surrogate wage rate used in the production of subject merchandise. For this reason, the Respondents argue that the antidumping statute requires surrogate values to be derived from sources that are significant producers of comparable merchandise. Therefore, the Respondents state that the Department fails to provide any record evidence to support its claim that the regression-based wage rate calculation creates the most accurate surrogate wage rate for garlic production. The Respondents conclude that the record, in fact, shows that the regression-based wage rate calculation used by the Department is significantly higher than the average wage rate in India, which is the selected surrogate country for this proceeding.

Department's Position:

The Department has determined that the application of its regression-based wage rate methodology results in the "best available information" on the record, in this remand redetermination, consistent with section 773(c)(1) of the Act. In addition, the Department has explained that within the data used in its calculations, it has used information derived from

²⁴ See *GDLSK Comments* at 15; *Draft Redetermination of Harmoni Spice* at 18-19, 31-33.

“significant producers” of comparable merchandise and information taken directly from countries that are “at a level of economic development comparable” to the PRC, pursuant to section 773(c)(4) of the Act. It is true that the Department has also used information derived from countries that are not economically comparable and are not significant producers of comparable merchandise, but in this regard, the Act is silent. The Respondents argue that the only option available to the Department is to use the standard methodology of choosing a single factor derived from a single country. However, we disagree that the Act limits the Department to such a simple analysis when the facts warrant an alternative methodology. Instead, the Department is required to apply a methodology that meets the requirements of both section 773(c)(1) and section 773(c)(4) “to the extent possible.” Accordingly, to the extent that the Respondents claim that the Department’s methodology is inconsistent with its statutory obligations, the Department respectfully disagrees with the Respondents’ legal analysis.

Respondents also argue that the CIT in this case orders the Department not to apply its methodology through its reference to *Allied Pacific I.*²⁵ This is an incorrect reading of the Court’s decision. The Court ordered the Department to explain with “sufficient evidence and adequate explanation” why there is “adequate justification to support {the Department}’s use of its regression methodology to calculate the applicable wage rate.” *Harmoni Spice*, 617 F. Supp. 2d at 1307. This is exactly the exercise which the Department has undertaken in this remand redetermination. Indeed, the Department believes that it has provided a greater detailed explanation of its reasoning and the relevant factors supporting its application of the regression-based wage rate methodology than was requested by the Court. Accordingly, the Department has determined that this remand redetermination fully complies with the analysis ordered by the

²⁵ See *Harmoni Spice*, 617 F. Supp. 2d at 1306, n30; *GDL SK Comments* at 13.

Court.

The Act requires the use of the “best available information,” but it does not define the term, nor does it clearly delineate how the Department should determine what constitutes the best available information. *See Shakeproof Assembly Components Div. of Ill. Tool Works, Inc. v. United States*, 59 F. Supp. 2d 1354, 1357 (CIT 1999), *aff’d* 268 F.3d 1376 (Fed. Cir. 2001) (“*Shakeproof*”); *China Nat’l Mach. Import & Export Corp. v. United States*, 264 F. Supp. 2d 1229, 1236 (CIT 2003). Additionally, the Federal Circuit in *Lasko* has recognized that the Act does not “say—anywhere--that the {FOPs} must be ascertained in a single fashion,” as long as the methodology is based on the “best available information” and establishes antidumping margins as accurately as possible.²⁶

As the Department has explained in detail above, the politics and policies of labor differ greatly from country-to-country, unlike the commercial value for most other FOPs. Thus, for example, some countries, such as Malaysia, Thailand and Turkey, may have economies that are comparable to, or even larger (on a basis of GNI) than the PRC, but their average labor rates may be drastically different for various social and political reasons, including the strength of unions and the level of minimum wage (See footnote 10 above for more detail). Despite the Respondents’ claims to the contrary, the Act does not require that the Department ignore the existence of these factors and select a single country from which to derive a wage rate. Instead, it requires the Department, “to the extent possible,” to use data from economies that meet certain criteria, and in every case, it requires the Department to select the “best information available.” This is the analysis conducted by the Department in this case.

The Respondents state that the Department “contradicted” itself when it stated in the draft

²⁶ *See Lasko*, 43 F.3d at 1446 (“*Lasko*”).

remand redetermination that there “are wide variances in wage rates between comparable economies,” while at the same time determining that there was a “strong positive correlation between wage rates and gross national income (GNI).” Such confusion arises out of basic misconceptions and/or misunderstandings. To address such confusion, the Department has modified the language of the remand redetermination to state that there “can be” wide variances instead of that there “are” such variances. In fact, there are some wide variances, but these variances do not exist between every single comparable economy. The use of the word “are” could be read to infer that there is no overall relationship between economies and wage rates, which was not the Department’s intent in using that terminology. We have modified the language accordingly.

The Department’s overall point with regard to GNI is that, taken as a whole, there is a strong, positive relationship²⁷ or, in other words, an overall pattern that reflects that wage rates tend to be similar among economies with similar levels of GNI. However, on a more “micro-level,” there are some fairly extreme variances between certain countries with respect to wage rates, as reflected so perfectly by comparing India’s wage rates to other comparable economy wage rates in the Department’s analysis above.²⁸ Accordingly, as explained in detail above, the Department’s methodology takes both of these factors into consideration. The Department’s

²⁷ “Correlation” is a term that shows the statistical relationship of a broad class between two or more observed data values. The discussion of this in the remand redeterminations references the wide variances in wage rates between comparable economies in the context of an individual dataset basis, which shows that there are certain anomalies in the data.

²⁸ As noted above, there is a gross variability between wage rates and GNI for certain individual countries over time, which is why we do not find reliance on wage data from a single surrogate country reliable for purposes of valuing the labor input. Rather, the statistical correlation across the basket of countries used in the regression analysis shows that there is a relationship between GNI and wages. The Department finds that the estimated relationship between GNI and wage rates is strong in the basket of countries used in the regression results, as evidenced by the 85% r-squared relationship in the results of the overall regression analysis. *See* Annex II.

methodology avoids extreme variances in labor wage rates that exist across certain market economies and, instead, accounts for the global relationship between GNI and wages. This is then used to determine an expected wage rate for the PRC, using that country's GNI. By avoiding the variability in results depending on which economically comparable country is selected as the surrogate, the Department finds that the results of the regression-based methodology allows Respondents in all antidumping investigations and administrative reviews involving the PRC to fully understand and analyze the Department's wage rate analysis with no possible arbitrary surrogate suddenly being applied in a given investigation or review.²⁹

Additionally, the Department continues to find that relying only on data from countries that are economically comparable under the Department's standard FOP analysis would undermine, rather than enhance, the accuracy of the Department's regression-based analysis. The number of "economically comparable" countries would be extremely small. For example, when examining countries with GNIs that range between \$530 and \$1,330 (*i.e.*, countries that might be considered economically comparable to China), there are just four countries out of a full dataset of 68 countries used in the revised wage rate calculation. *See Annex II.* A regression based on such a small subset of countries is highly dependent, as discussed above in the remand, on each and every data point and, thus, the inclusion or exclusion of any one country could have an extreme effect on the regression results from case to case, and from year to year. Relying on a broad data set, as opposed to data from just the economically comparable countries, maximizes

²⁹ The Department understands that in applying such a methodology, there would be concern about predictability – since the methodology differs from those applied to any other FOP. Accordingly, to enhance predictability, the average wage applied in any NME proceeding is calculated by the Department each year, based on the most recently available data, and is available to any interested party. *See Antidumping Duties; Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments*, 61 FR 7308, 7345 (February 27, 1996).

the accuracy of the regression results, minimizes the effects of the potential year-to-year variability in the country basket, and provides predictability and fairness. *See Final Rule*, 62 FR at 27367; *see also Revised Methodology Notice*, 71 FR at 61720.

For the reasons articulated above, the Department finds that by using the regression methodology to calculate an expected wage rate using the GNI from the PRC, the Department has derived a wage rate that is the “best available” on the record. As the CIT stated in *Dorbest*, the expected wage rate calculated for the NME country is “by definition a wage rate for a producer country at a comparable level of development, as required by section 773(c)(4) of the Act.” *See Dorbest I*, 462 F. Supp. 2d at 1293.

With regard to the Respondents’ contention that the regression-based methodology does not focus on the significant producer criterion or labor types that are specific to the case, the Department continues to disagree. In determining surrogate values, the Department need not “duplicate the exact production experience of the {PRC} manufacturers.” *See Nation Ford*, 166 F.3d at 1377 (*citing Magnesium Corp. of America v. United States*, 938 F. Supp. 855 (CIT 1996) (upholding the Department’s use of a surrogate value for a primary input of production where the actual input differed from the production experience in the NME). However, in this case, this point is largely irrelevant because the basket of countries used in the regression-based wage rate calculations without question includes significant producers of garlic, including India. While it is true that we use additional data from countries that are not significant producers, the Department may “depart from surrogate values when there are other methods of determining the ‘best available information’ regarding the values of the {FOPs}.” *See Shakeproof*, 268 F.3d at 1381. Put simply, the Act does not prevent our usage of additional data from countries that are

not significant producers in the regression-based wage rate calculation, if the use of such data would result in a better, more accurate result.

While the Respondents argue that the most accurate wage rate would be one related to the production of comparable merchandise from the single chosen surrogate country, the Department finds that there is no evidence on the record of this remand that there is a relationship between a country's labor rates, specifically, and its production of garlic. Instead, the Department finds that the regression-based methodology provides for a better labor value, because it uses data from countries that are both significant and non-significant producers of garlic, thereby providing a variable average that "smoothes out" the variations in the data and permits, in a predictable manner, the estimation of a market-economy wage rate relative to a level of GNI that is as accurate as practicable, with the least amount of volatility across cases. Accordingly, the Department disagrees with the Respondents' claims on this point, and has concluded that the strong relationship between GNI and wage rates in the overall regression results, unlike the variability between GNI and wage rates for individual countries over time, shows that using the regression-based methodology is the best available information for valuing labor and will result in the most accurate possible antidumping margin for this remand.

Therefore, because the Department's regression analysis utilizes the best available information for the calculation of a surrogate value for labor, and comports with the antidumping statute, the Department will continue to value labor for this remand determination using its regression analysis. Thus, for this remand for determination, we have continued to use the regression-based wage rate of \$0.80 per hour as the surrogate value for labor.

Comment 4: Surrogate value for packing cartons

The Respondents argue that the Department’s Draft Redetermination ignores the Court’s instructions and simply repeats the same reasoning found to be unconvincing by the Court. The Respondents contend that while the Court held that the Department “failed to explain how {the seemingly} non-representative import data is the ‘best available information’ when domestic data on the record represent the exact type of product used by the Respondents and actual domestic market prices for that input,” the Department did not address the shortcoming of the import data it selected to value cartons, *i.e.*, the lack of specificity of the HTS import statistics used as a surrogate value for cartons and the inclusion of boxes transported by air, or the preference for domestic prices. *See* GDLSK Comments at 16. The Respondents also maintain that the Court specifically considered the arguments the Department included in its Draft redetermination and found that the HTS data, although broad-based, contemporaneous, and publicly available, could not overcome the lack of specificity when compared with the more specific price quotes for cartons. In addition, the Respondents argue that the Department’s use of HTS data is inconsistent with its arguments concerning specificity in the context of the surrogate value for garlic bulbs, and that the additional data placed on the record by the Department shows price variation further undermining the Department’s use of the Indian HTS data. Finally, the Respondents argue that the Department’s reliance upon *Jinan Yipin II* is misplaced. Consequently, the Respondents argue, the Department continues to use the less accurate and less reliable surrogate value source.

Department’s Position:

The Respondents correctly state that the Department’s consideration of the carton value in the Draft Redetermination relies on some of the same findings as the Department’s

consideration of this value in the *Final Results*. The Department has longstanding practices that enable it to predictably select reliable and appropriate surrogate values. These practices include relying upon broad-based, publicly available, product-specific, and contemporaneous values. While the WTA data are broad-based, publicly available, and contemporaneous with the POR, the Court indicates that the price quotes are superior to the WTA data with regard to product-specificity. See *Harmoni Spice*, 617 F. Supp. 2d at 1321. The Court also concluded that the WTA data for the selected HTS category for cartons do not bear a reasonable relationship to the boxes used by the Respondents to pack their garlic because of the inclusion of airfreight in the values included within the Indian import data and the trade research data on the record of the review. *Id.*, 617 F. Supp. 2d at 1320.

In its redetermination, the Department acknowledges the fact that the data obtained through the WTA do not perfectly represent the inputs of the Respondents because the Indian import data include specialty boxes, and boxes transported by air. However, the product specificity of the price quotes does not overcome the problems with this data source. The price quotes do not represent broad market averages and do not reflect prices throughout the POR. The fact that the Respondents have stated that they purchase cartons from domestic sources (*i.e.*, Chinese) leads the Department to believe that these price quotes from Indian vendors may have been requested solely for the purpose of obtaining a surrogate value for this review and may not represent actual arm's length prices for a completed order of these boxes between unaffiliated parties. To avoid this potential for manipulation, the Department has a practice of selecting data representing broad market averages as surrogate values.

With regard to preference for domestic prices, the Court qualified that preference by

stating “all other things being equal—there is a preference for Commerce’s use of domestic data, rather than import statistics such as those that the agency relied on in this case.” *Harmoni Spice*, 617 F. Supp. 2d at 1316. As discussed above, however, the price quotes are not equal to the WTA data, therefore the preference for use of domestic data is not applicable here.

While Respondents claim that the Department’s use of import data here is inconsistent with its arguments regarding specificity in the context of surrogate value selection for garlic bulb, we disagree. The price quotes, while possibly specific, represent minute segments of the overall market. As only a handful of price quotes, they are highly susceptible to market fluctuations. While the garlic bulb data may encompass a limited time span, they include hundreds of data points at a market that serves as a major distribution center, representing an extremely high volume of sales. As such, they provide product specificity without compromising representation of the domestic Indian garlic bulb market. In contrast, the product specificity of the four price quotes does not outweigh their extremely limited data size.

Given that the Department has a practice of selecting data representing broad market averages as surrogate values and the Court has affirmed this preference as previously cited above, we continue to find that the WTA data are the best available information with which to value Respondents’ cartons in this proceeding.

Comment 5: Surrogate value for jars and lids

The Respondents make practically identical arguments as those made with regard to cartons. They argue that the Department’s *Draft Redetermination of Harmoni Spice* ignores the Court’s instructions and simply repeats the same reasoning found to be unconvincing by the Court. The Respondents contend that while the Court held that the Department “failed to explain

how {the seemingly} non-representative import data is the ‘best available information’ when domestic data on the record represent the exact type of product used by the Respondents and actual domestic market prices for that input,” the Department did not address the shortcoming of the import data it selected to value plastic jars and lids, *i.e.*, the lack of specificity of the HTS import statistics used as a surrogate value, or the preference for domestic prices. *See* GDLSK Comments at 20. The Respondents also maintain that the Court specifically considered the arguments the Department included in its *Draft Redetermination of Harmoni Spice* and found that the HTS data, although broad-based, contemporaneous, and publicly available, could not overcome the lack of specificity when compared with the more specific price quotes for cartons. In addition, the Respondents argue that the Department’s use of HTS data is inconsistent with its arguments concerning specificity in the context of the surrogate value for garlic bulbs, and that the additional data placed on the record by the Department shows price variation further undermining the Department’s use of the Indian HTS data. Finally, the Respondents argue that the Department’s reliance upon *Jinan Yipin II* is misplaced. Consequently, the Respondents argue that the Department must find that the price quotes constitute the best available information on the record given the Court’s strong rejection of the arguments upon which the Department continues to rely.

Department's Position:

As noted above, the Department has longstanding practices that enable us to predictably select reliable and appropriate surrogate values. These practices include relying upon broad-based, publicly available, product-specific, and contemporaneous values. While the WTA data are broad-based, publicly available, and contemporaneous with the POR, the Court indicates that the price quotes are superior to the WTA data with regard to product-specificity. *See Harmoni Spice*, 617 F. Supp. 2d at 1327.

In its redetermination, the Department acknowledges the fact that the data obtained through the WTA do not perfectly represent the inputs of the Respondents because the Indian import data include a broad range of products that are different from the plastic jars used to pack garlic and included products that, unlike those the Respondents used, were shipped by air. However, just as with cartons, the product specificity of the price quotes does not overcome the problems with this data source. The price quotes do not represent broad market averages and do not reflect prices during the POR. The fact that the Respondents have stated that they purchase jars and lids from domestic sources (*i.e.*, Chinese) leads the Department to believe that these price quotes from Indian vendors may have been requested solely for the purpose of obtaining a surrogate value for this review and may not represent actual arm's-length prices for a completed order of these boxes between unaffiliated parties. To avoid this potential for manipulation, the Department has a practice of selecting data representing broad market averages as surrogate values.

While Respondents claim that the Department's use of import data here is inconsistent with its arguments regarding specificity in the context of surrogate value selection for garlic

bulb, we disagree. The price quotes, while possibly specific, represent minute segments of the overall market. As a handful of price quotes, they are highly susceptible to market fluctuations. While the garlic bulb data may encompass a limited time span, they include hundreds of data points at a market that serves as a major distribution center, representing an extremely high volume of sales. As such, they provide product specificity without compromising representation of the domestic Indian garlic bulb market. In contrast, the product specificity of the three price quotes does not outweigh their extremely limited data size.

With regard to preference for domestic prices, the Court qualified that preference by stating “all other things being equal—there is a preference for Commerce’s use of domestic data, rather than import statistics such as those that the agency relied on in this case.” *Harmoni Spice*, 617 F. Supp. 2d at 1324. As discussed above, however, the price quotes for jars and lids are not equal to the WTA data; therefore the preference for use of domestic data is not applicable here.

Given that the Department has a practice of selecting data representing broad market averages as surrogate values and the Court has affirmed this preference as previously cited above, we continue to find that the WTA data are the best available information with which to value Respondents’ plastic jars and lids in this proceeding.

E. Conclusion

Pursuant to the Court’s opinion, we have reconsidered and recalculated the weighted-average antidumping duty margins of Jinan Yipin Corporation, Ltd., Linshu Dading Private Agricultural Products Co., Ltd. and Sunny Import and Export Co., Ltd. Based on these changes, the Department has recalculated the margins for the respondents as follows:

Jinan Yipin Corporation, Ltd.: 55.18%

Linshu Dading Private Agricultural Products Co., Ltd.: 39.51%

Sunny Import and Export Co., Ltd.: 26.67%

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

Date