

Jinxiang Hejia Co. Ltd. v. United States
CIT Court No. 09-00471
FINAL RESULTS OF REDETERMINATION
PURSUANT TO COURT ORDER

A. Summary

The Department of Commerce (the Department) has prepared these results of redetermination pursuant to a request for a voluntary remand order of the U.S. Court of International Trade (Court) in Jinxiang Hejia Co. Ltd. v. United States, Court No. 09-00471. The Court granted the Department's request for a voluntary remand on October 25, 2010 (Remand Order). This remand concerns the Department's final results of the new shipper review of the antidumping duty order on fresh garlic from the People's Republic of China (PRC). See Fresh Garlic from the People's Republic of China: Final Results and Final Rescission, In Part, of New Shipper Reviews, 74 FR 50952 (October 2, 2009) (Final Results), and accompanying Issues and Decision Memorandum. The purpose of the Department's request for remand was to further analyze the record and provide a more complete explanation of how it calculated the surrogate value for single-clove garlic bulbs, which is the primary input into Jinxiang Hejia Co. Ltd.'s (Hejia) U.S. sale. In this remand, the Department has further analyzed the record, reexamined its original decision, and has provided a more complete explanation of its decision in the new shipper review of Hejia.

B. Background

In June 2008, the Department initiated new shipper reviews of the antidumping duty order on fresh garlic from the PRC with respect to sales made by six new exporters, including Hejia. See Fresh Garlic from the People's Republic of China: Initiation of Antidumping Duty New Shipper Reviews, 73 FR 38979 (July 8, 2008). The period of review (POR) for Hejia was November 1, 2007, through June 9, 2008.

In May 2009, the Department published the preliminary results of these new shipper reviews. See Fresh Garlic From the People’s Republic of China: Preliminary Results of New Shipper Reviews, 74 FR 20452, 20457 (May 4, 2009) (Preliminary Results). Because the PRC is a non-market economy (NME) country, the Department determined that India was an appropriate country from which to obtain surrogate values for Hejia’s factors of production (FOPs). See Memorandum to the File, from Toni Page, International Trade Analyst, Import Administration: Preliminary Results of the 2007-2008 New Shipper Reviews of Fresh Garlic from the People’s Republic of China: Surrogate Values (April 27, 2009) (Surrogate Values Memorandum). Based on the information submitted on the record by Hejia, the Department concluded that Hejia’s garlic bulb possessed physical characteristics significantly different from those of the other respondents. Id. at 4; see also Supplemental Questionnaire Response for Section A, C & D of Hejia (March 30, 2009) (Supplemental Questionnaire Response) (claiming that single-clove garlic was a variety that differs from the multi-clove garlic sold by the other respondents; the retail price of single-clove garlic is much higher than multi-clove garlic). Prior to the Preliminary Results, no interested party submitted suggested surrogate values with which to value the single-clove garlic sold by Hejia. Because the Department could not use the surrogate value data used for multi-clove garlic bulbs sold by other respondents to value Hejia’s sale, the Department searched for surrogate value data for Hejia’s single-clove garlic bulb for the Preliminary Results. See New Shipper Review of Fresh Garlic from the People’s Republic of China: Analysis for the Preliminary Results of Jinxiang Hejia Co., Ltd. (Hejia), at 3 (April 27, 2009) (Preliminary Analysis Memorandum).

The Department’s research yielded only a single 2009 sales offer for single-clove garlic from Sundaram Overseas Operation (“SOO”), an Indian manufacturer of various products. Id.;

see also Attachment IV at 2, 4. SOO's sales offer, which was published on a third party website, www.PeruTradeNet.com (PeruTradeNet website), was for a single-clove garlic product that is physically similar to the product sold by Hejia. Id. The SOO website, in at least three instances, identifies itself as a "manufacturer." Id., at Attachment IV at 4, 6, 9. Further, SOO's website states that it is "ISO and ISI certified." Id. at 4. The Department's attempts to obtain further information from SOO prior to the Preliminary Results were unsuccessful. Id.

In the Preliminary Results, the Department determined that the 2009 sales offer from SOO represented the best available information on the record for Hejia's garlic bulb valuation. See Preliminary Results, 74 FR at 20457. The Department noted that, in accordance with section 773(c)(1) of the Tariff Act of 1930, as amended (the Act), its practice when selecting the best available information for valuing FOPs "is to select, to the extent practicable, surrogate values which are publicly available, product-specific, representative of a broad market average, tax-exclusive and contemporaneous with the {period of review}." Id. The sales offer posted by SOO required several adjustments to calculate a preliminary surrogate value for single-clove garlic. Specifically, the Department assumed that SOO was a trading company, and not a manufacturer; therefore, it was necessary to adjust the SOO offer price by removing the profit, selling, general and administrative (SG&A) expenses, and overhead. Id. Additionally, the Department estimated that the unit of measurement referred to in the SOO sales offer was one clove of garlic and that SOO's single-clove garlic weighed the same as Hejia's single-clove garlic. Id. The Department requested further comments and factual information from the interested parties regarding the appropriate surrogate value for Hejia for the final results. Id.

On May 19, 2009, Hejia timely submitted surrogate value data from four different companies, each of which reportedly sold a product with the same physical characteristics as the

single-clove garlic product sold by Hejia. See New Shipper Review of Fresh Garlic from the People’s Republic of China, Submission of Surrogate Value for Use in Final Results (May 19, 2009) (Hejia Surrogate Value Submission). Hejia submitted its surrogate value data in the form of website print-outs of export sales offers. Id. Three of the sales offers came from www.Alibaba.com (Alibaba website). These sales offers were from Jobs International Pvt., Ltd. (Jobs) for \$1.20/kg, Krishna International (Krishna) for \$1.18/kg, and Rising Friendship Company (Rising Friendship) for \$1.15/kg.¹ The fourth sales offer was posted by Mani International Trading Company (Mani) for \$1.18/kg on www.Indiamart.com (Indiamart website). Id. All three of the offers on the Alibaba website were marked as “New Arrival.” See New Shipper Reviews of Fresh Garlic from the People’s Republic of China: Calculation Memorandum for the Final Results of Jinxiang Hejia Co., Ltd. (September 24, 2009) (Final Calculation Memorandum) at Attachment 1. The remaining sales offer from Mani, on the Indiamart website, had a posting date of May 18, 2009, the day before Hejia filed its surrogate value submission which contained the sales offer, and therefore should also be considered a “new arrival.” Id. The price quotes in all four sales offers were within five cents of each other, and all were [] than the price listed for Hejia’s U.S. sale. Id. Further, none of the four sales offers submitted by Hejia appeared to be available during the Department’s search for a surrogate value prior to the Preliminary Results. See Final Results and accompanying Issues and Decision Memorandum at 18.

On August 17, 2009, Fresh Garlic Producers Association and its individual members (Christopher Ranch L.L.C., the Garlic Company, Valley Garlic, and Vessey and Company, Inc.)

¹ The Department notes that while Hejia presented all three of the Alibaba website sales offers as being from Indian companies, there is some question as to whether the Rising Friendship sales offer is from a company located in India or Nepal, and whether the garlic was actually of Indian or Nepalese origin. See Hejia Surrogate Value Submission at Exhibit 3.

(collectively, Petitioners) timely submitted their case brief, which argued that should the Department continue to find Hejia's sale to be bona fide, the Department should revise the number of cloves that comprise a kilogram from 28 cloves to 51 cloves, the number of cloves that was confirmed at verification. See New Shipper Review of Fresh Garlic from the People's Republic of China, Petitioners' Case Brief (August 17, 2009). Further, Petitioners argued that because Hejia has argued that its sales of single-clove garlic are very profitable, the Department should use the profit ratio found in Tata Tea Ltd.'s financial statements to calculate Hejia's normal value (NV). Id. Petitioners contend that because the single-clove garlic is very profitable, the Department should use the highest profit ratio on the record of this review for calculation of NV, and Tata Tea Ltd. has the highest profit ratio. Id.

On August 25, 2009, Hejia submitted its case brief, in which it argued that the Department should use only the surrogate value data submitted by Hejia and not the SOO sales offer. See New Shipper Review of Fresh Garlic from the People's Republic of China, Case Brief of Jinxiang Hejia Co., Ltd. (August 25, 2009) (Hejia Case Brief). Specifically, Hejia argued that because "the small single-clove garlic comes in so many different sizes" it is unreasonable for the Department to assume that SOO's single-clove garlic is the same size as the garlic offered by Hejia. See Hejia Case Brief at 3 (internal quotations and citations omitted). Further, Hejia argued that the Department only relied on the SOO sales offer for the Preliminary Results because there were no other appropriate data on the record, and that the Department should use only the data placed on the record by Hejia for the final results. Id. at 4.

On August 26, 2009, Hejia submitted its rebuttal brief, in which it restated its arguments against using the SOO sales offer in the final results. See New Shipper Review of Fresh Garlic from the People's Republic of China, Rebuttal Brief of Jinxiang Hejia Co., Ltd. (August 26,

2009) (Hejia Rebuttal Brief). Hejia argued that the Department's assumption as to the unit measure of SOO's sales offer was "baseless and unreasonable," and that the Department should "use the more complete and reliable surrogate unit price provided by Hejia." Id. at 15.

In October 2009, the Department published its final results of the new shipper reviews. See Final Results and accompanying Issues and Decision Memorandum. The Department noted that "each of the potential surrogate values on the record" was flawed. Id. at 18. Specifically, some of the sales offers submitted by Hejia were marked as "new arrival" offers by the Alibaba website and the Department concluded that they were recently created. Id. The SOO sales offer, which was also available on the Alibaba website, was not marked as a "new arrival" and appeared on the Alibaba website "prior to the Preliminary Results." Id. The Department also noted that the SOO sales offer was "widely available on the internet prior to the Preliminary Results." Id. Therefore, the Department found that the "probative value of these 'new arrival' sales offers does not outweigh that of the SOO offer" which did not specifically state a unit of measure. Id. As such, the Department decided to use both the SOO sales offer and the sales offers submitted by Hejia for purposes of the final calculation. Id. at 18-19.

Although, in the Preliminary Results, the Department assumed that SOO acted as a trading company, upon further review of record information the Department determined that SOO "is an ISO certified manufacturer and exporter of garlic products," and therefore its "role is comparable to that of Hejia which acted as the processor and exporter of garlic." See Final Calculation Memorandum at 2; see also Final Results and accompanying Issues and Decision Memorandum at 19. Because the Department found that SOO performs similar processing and selling functions as Hejia, it did not adjust SOO's price by removing the profit, SG&A, and overhead for the Final Results. Id.

Thus, for the Final Results, the Department calculated a surrogate value for single-clove garlic using a simple average of (1) the free-on-board (FOB) sales offer from SOO (not adjusted for profit, SG&A, and overhead) and (2) the simple average of the FOB sales offers submitted by Hejia subsequent to the Preliminary Results. The Department determined that an average of the FOB sales information from these sources reflected the best available information on the record in accordance with section 773(c)(1) of the Act. See Final Results and accompanying Issues and Decision Memorandum at 18.

On December 2, 2009, Hejia filed a complaint with the Court challenging the Department's calculation of surrogate country financial ratios. On April 20, 2010, Hejia filed a motion to amend the complaint to add an additional count challenging the Department's calculation of the surrogate value for garlic. On April 21, 2010, the Court granted Hejia's motion to amend its complaint. On September 24, 2010, the Department requested a voluntary remand so that the Department could "further analyze the evidence on the record, provide a reasoned explanation, and take any appropriate action consistent with the remand analysis." Defendant's Response to Plaintiff's Motion For Judgment Upon the Agency Record at 10 (Ct. Int'l Trade, Ct. No. 09-00471, Sept. 24, 2010) On October 25, 2010, the Court granted the Department's voluntary remand request ordering that the Department "reevaluate the evidence in the record and issue a remand redetermination, consistent with its reevaluation, that fully explains the basis for Commerce's conclusions" Remand Redetermination Order (Ct. Int'l Trade, Ct. No. 09-00471, Oct. 25, 2010).

On December 20, 2010, the Department issued its draft redetermination results to the interested parties. Memorandum For the File, through Thomas Gilgunn, Program Manager, AD/CVD Operations, Office 6, from Scott Lindsay, Case Analyst, AD/CVD Operations, Office

6: Draft Remand Redetermination: Fresh Garlic from the People's Republic of China (Draft Remand Results). The Petitioners submitted timely comments on the Department's Draft Remand Results on December 27, 2010 (Petitioners' Comments), stating that they agree with the Department's Draft Remand Results. The Petitioners also urge the Department to decline to modify the Draft Remand Results in response to any comments made by Hejia. On December 28, 2010, Hejia submitted timely comments which are addressed by the Department below (Hejia's Comments).

C. Analysis

The Department's Use Of The SOO Sales Offer And The Offers Submitted By Hejia To Calculate A Surrogate Value For Single-Clove Garlic

For the purposes of these Final Results of Redetermination Pursuant to Court Order, the Department is continuing to calculate a surrogate value for single-clove garlic using a simple average of the FOB sales offer from SOO and the average of the four FOB sales offers submitted by Hejia. The Department finds that an average of this FOB sales information from these multiple sources reflects the best available information on the record in accordance with section 773(c)(1) of the Act.

When selecting possible surrogate values for use in an NME proceeding, the Department's preference is to use, where possible, a publicly available value which is: (1) an average non-export value; (2) representative of a range of prices within the period of investigation (POI)/POR or most contemporaneous with the POI/POR; (3) product-specific; and (4) duty and tax-exclusive. See Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 from the People's Republic of China, 69 FR 67304 (November 17, 2004) (Carbazole Violet Final), and accompanying Issues and Decision Memorandum at Comment 3. All of the potential surrogate values are based on sales offers for Himalayan pearl

garlic from India that are physically similar to the single-clove garlic sold by Hejia. See Preliminary Results.

Prior to the Final Results, the Department had five different sales offers on the record for single-clove garlic bulbs. The first was the SOO sales offer the Department found and used in the Preliminary Results. As discussed in the Final Results, the Department acknowledges that the SOO sales offer does not explicitly specify a unit of measure, nor is it contemporaneous with the POR. However, the Department mitigated these deficiencies by utilizing a conservative estimate of 28 single-clove garlic bulbs per kilogram, and by deflating the sales offer price to make it contemporaneous with the POR. See Preliminary Analysis Memorandum at 3, 4. In its favor, the SOO sales offer was obtained by the Department itself, from the PeruTradeNet website prior to the Preliminary Results. See Preliminary Analysis Memorandum at Exhibit IV. Further, SOO's sales offer was available on the internet prior to the Preliminary Results. Finally, the Department finds the relatively high surrogate value that the SOO sales offer generates is in line with Hejia's contention that single-clove garlic commands a higher price than multi-clove garlic, and, therefore, its U.S. sale price was not aberrational, and should be considered bona fide. The Department found in the Final Results that single-clove garlic is a specialty product that commands a higher price than regular multi-clove garlic. Therefore, given these factors, the Department finds the SOO price to be reliable and to have particularly probative value for use as a surrogate value for Hejia's single-clove garlic input.

Subsequent to the Preliminary Results, Hejia's four sales offers were placed on the record. Unlike the SOO sales offer, the Hejia's four sales offers do specify a unit of measure, although they, too, are not contemporaneous with the POR. Hejia's sales offers are for a period after the POR and later in time than the SOO sales offer. As is the case with the SOO offer, the

non-contemporaneous deficiency can be rectified by deflating sales offer price to make it contemporaneous with the POR. However, even after deflating Hejia's post-Preliminary Results sales offers and the pre-Preliminary Results SOO sales offer, there remains a substantial difference between the pre-Preliminary Results SOO sales offer and the post-Preliminary Results sales offers. Specifically, the single-clove sales offers submitted by Hejia are each priced much lower than any other single-clove garlic prices on the record. The Department finds this to be a significant problem with the Hejia sales offers because Hejia argued during the new shipper review that its high sales price to the United States was justified by the “[] fresh garlic product with much []” See Supplemental Questionnaire Response at 8-9. The four sales offers submitted by Hejia are not priced at a level that appears to justify the [] status to which it was attributed by Hejia. Further, Hejia provided record evidence of the high prices of single-clove garlic sold in several different countries (Germany, Great Britain, and Japan) to demonstrate that its U.S. sales price was not aberrationally high, and therefore reflected a bona fide price which rendered its new shipper review sale bona fide. Id. In the Final Results, the Department accepted that Hejia's sale is bona fide. This finding, based on Hejia's own argument that single-clove garlic bulbs demand a high price, calls into question the probative value of the four sales offers submitted by Hejia, for surrogate value purposes.

The Department has conducted a detailed examination of the various garlic bulb prices on the record of this review. As noted above, Hejia placed on the record four sales offers it recommends for use as a surrogate value. The lowest priced single-clove sales offer placed on the record by Hejia is for \$1.15/kg, and the highest sales offer is for \$1.20/kg. The Department

finds Hejia's sales offer's prices to be well below the price of the single-clove garlic that Hejia sold to the United States, \$[]/kg, the SOO sales offering that the Department utilized in the Final Results, \$[]/kg, and the price information that Hejia itself placed on the record for sales offers in Germany at \$[]/kg, Great Britain at \$[]/kg,² and Japan at \$[]/kg.³ Further, Hejia's sales offer prices are, in fact, even lower than the Grade Super-A whole multi-clove garlic bulb price that the Department used as the surrogate value for multi-clove garlic bulbs larger than 55 mm, which was 52.77 rupees/kg, or somewhere between \$1.28/kg and \$1.35/kg during the POR.⁴ See Surrogate Values Memorandum. Below is a chart summarizing the single-clove garlic bulb price and sales offer information on the record, including the Super-A grade surrogate value for this POR.

Source of Sales Offer	Price (per/kg)
Hejia's Single-clove Garlic Sale Offer (Rising Friendship)	\$1.15
Hejia's Single-clove Garlic Sale Offer (Mani)	\$1.18
Hejia's Single-clove Garlic Sale Offer (Krishna)	\$1.18
Hejia's Single-clove Garlic Sale Offer (Jabs)	\$1.20
Super-A Price – Fresh, Multi-Clove, Garlic Surrogate Value	\$1.28-\$1.35
SOO Single-clove Garlic Sale Offer	\$5.38
Japan Single-clove Garlic Price	\$[]
Germany Single-clove Garlic Price	\$[]
Great Britain Single-clove Garlic Price	\$[]

During the new shipper review Hejia argued that single-clove garlic is a specialty product that commands a higher price than multi-clove garlic. However, the reliability of the extremely low proposed surrogate values submitted by Hejia is belied by its own arguments that its product commands a particularly high price. Even accounting for processing costs (washing, cutting,

² See Supplemental Questionnaire Response at 9.

³ See Hejia's February 1, 2009 supplemental questionnaire response at Exhibit SA-10.

⁴ The Department used the highest and lowest POR exchange rates from the Indian import statistics on its website to create this price range.

packing, and SG&A expenses), Hejia's profit on this sale using only the price quotes it submitted would have been more than []% of its costs. If, as Hejia claims, single-clove garlic commands a much higher price than regular multi-clove garlic (which is evidenced by the price quotes from Japan, Great Britain, and Germany), one would expect that the single-clove bulb itself would command a higher price given that it is only minimally processed before it is exported. In light of this apparent contradiction, the Department does not consider that each of the four sales offers submitted by Hejia after the Preliminary Results have the same probative value as the SOO offer.

The prices listed in the Hejia-submitted sales offers for surrogate value purposes are very low when compared to other price data for single-clove garlic on the record. The Department notes that other price data for single-clove garlic submitted by Hejia (to support its position that single-clove garlic is a [] product which commands a premium price) is four to twelve times higher than the price range for the Hejia-submitted surrogate value data. However, the Department found and continues to find that these sales offers should not be completely disregarded because they are the only available surrogate value information for single-clove garlic on the record for which an explicit unit of measure was included in the sales offer. Moreover, while none of the available sales offers are contemporaneous with the POR, all of the offers are relatively close in time. Finally, the Hejia-submitted sales offers appear to reflect a substantially different market valuation from the SOO sales offer with no apparent justification on the record for the differences.

A possible explanation for the substantial difference between the SOO sales offer independently found by the Department and the post-Preliminary Results sales offers submitted by Hejia is that Hejia selected for submission surrogate values that were favorable to it, but were not reflective of the full spectrum of values or the extent to which transactions actually occur at

those values in the market. As prices fluctuate over time, individual price quotes or sales offers selected for submission to the Department may represent one extreme or the other. See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Saccharin From the People's Republic of China, 68 FR 27530 (May 20, 2003), and accompanying Issues and Decision Memorandum at Comment 1. Also, prices quotes and sales offers do not represent actual completed transactions. Id. It is for these reasons that it is the Department's strong preference to value inputs using data based on a broad range of actual transactions that are representative of commercial prices in the surrogate country over price quotes and sales offers. See Carbazole Violet Pigment 23 from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 75 FR 36630 (June 28, 2010), and accompanying Issues and Decision Memorandum at Comment 5. Such broad-based, public data are both neutral and independent of the views of the interested parties. However, where broad-based, public price data based on actual transactions are not available, as in this case, the Department may have no choice but to rely on sales offers, price quotes, price lists or other information. See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Refined Brown Aluminum Oxide (Otherwise known as Refined Brown Artificial Corundum or Brown Fused Alumina) from the People's Republic of China, 68 FR 55589 (September 26, 2003) and accompanying Issues and Decision Memorandum at 9; see also Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results and Partial Rescission of New Shipper Reviews, 73 FR 36840 (June 30, 2008) and accompanying Issues and Decision Memorandum at Comment 3.

In this case, when assessing the four sales offers placed on the record by Hejia, the Department was mindful of the fact that these were not actual transaction prices for the single-clove garlic bulb input, and that they were placed on the record by an interested party. The

Department finds these sales offers to have been made at almost the same point in time and at prices that are so close to each other that the sales offers should be considered to represent a single price point in the Indian market. This position is supported by two of the Indian Alibaba website prices being offered at an FOB price out of the same port, Nahavaseva. See Hejia Surrogate Value Submission, at Exhibits 1 and 2. In addition, the Department notes that the sales offers from Krishna, Jabs, and Rising Sun submitted by Hejia after the publication of the Preliminary Results were identified as “new arrival” offers by the Alibaba website. See Final Calculation Memorandum at Attachment 1. The Department finds that this is an indication that the sales offers were posted on the Alibaba website after the Preliminary Results. The sales offer from Mani was posted on May 18, 2009, the day before Hejia filed its surrogate value submission which contained the sales offer, and therefore should also be considered a “new arrival.” See Hejia Surrogate Value Submission, at Exhibit 3. Despite an extensive search prior to the Preliminary Results, the Department did not find any sales offers other than the SOO offer. In addition, the Department finds that these “new arrival” sales offerings submitted by Hejia were apparently posted after the announcement of the Preliminary Results, whereas the SOO sales offer was found by the Department prior to the Preliminary Results. Therefore, in weighing the probative value of the sales offer information on the record, the Department finds that the individual sales offers submitted by Hejia should be considered collectively on the one hand and averaged with the SOO sales offer on the other hand. Weighing the sales offer information submitted by Hejia in this manner is consistent with the Department’s finding, noted above, that it considers the individual sales offers submitted by Hejia, which appeared on third party websites almost simultaneously at nearly identical prices, to represent a single price point as does the SOO price obtained by the Department prior to the Preliminary Results.

Therefore, to calculate the surrogate value for Hejia's single-clove garlic, the Department is continuing to average the single price point represented by the average of the four Hejia sales offers with the SOO sales offer. The Department believes that, in the case of single-clove garlic, this average more appropriately reflects the point that Hejia argued with which the Department agreed, that single-clove garlic (and by reference single-clove garlic bulbs) command higher prices.

That is the situation in which the Department found itself in Hejia's new shipper review. As discussed above, both the SOO price quote, obtained by the Department prior to the Preliminary Results, and the sales offers submitted by Hejia after the Preliminary Results have flaws; however, together, they are the best available information on the record. When the Department stated in the Final Results that "we find that both the SOO sales offer and the sales offer information placed on the record by Hejia are equally usable and equally represent the best available information on the record," we meant that while the quotes submitted by Hejia should not be wholly disregarded, it would be inappropriate, for all the reasons discussed above, to give each of the four offers submitted by Hejia equal weight to the SOO offer. Moreover, affording each of the four offers equal weight would encourage parties to submit endless sales offers and price quotes with a view to tilt the surrogate value calculation in their favor.

D. Comments from the Parties

Comment 1: The Valuation of the Raw Garlic Input

Hejia's Comments:

Hejia argues that the SOO sales offer still does not constitute the best available information. Hejia contends that the Department has acknowledged that the SOO offer is inadequate, and was forced to make numerous assumptions in its calculation regarding the SOO sales offer. These assumptions include (1) the quantity of the SOO sales offer, (2) the weight per

clove of the SOO sales offer, and (3) SOO's status as a manufacturer of garlic. See Hejia's Comments at 2-3. Further, according to Hejia, the Department has failed to justify its Final Results in the Draft Remand Results and instead created an essentially new final result, by reversing itself and now arriving at the conclusion that the Department does not consider each of the four sales offers submitted by Hejia to have the same probative value as the SOO offer. See Hejia's Comments at 3-4.

Hejia argues that the Department bases its determination in the Draft Remand Results on the fact that the SOO offer is so much higher than the four offers submitted by Hejia (approximately [] percent higher). However, Hejia argues that the Department fails to justify the seminal issue of explaining why the SOO price is so high. Hejia contends that the reason the SOO sales offer price is so high is because the Department simply speculated as to (1) what the appropriate quantity should be for SOO's sales offer, and (2) how many cloves of garlic should be in a kilogram. Thus, Hejia contends, the Department previously stated correctly that the "SOO sales data was incomplete," and fails to address these deficiencies in its Draft Remand Results. See Hejia's Comments at 4.

Further, Hejia disagrees with the Department's finding that the high price for SOO garlic is in line with the single-clove garlic prices sold by Hejia to the United States, as well as single-clove garlic prices to Germany, Great Britain, and Japan. Hejia argues that the Department is making an apples-to-oranges comparison. Hejia argues that there is no record evidence that any of the sales offers are for sales to the United States, or anywhere else. On the other hand, Hejia contends that Chinese single-clove garlic has been sold at high prices to the United States, Germany, etc. According to Hejia, these are two completely different markets, both for sales (India and the PRC) as well as for purchase (India for the sales offers of Indian garlic, and the

United States, Germany, etc., for sales of Chinese garlic). Id. at 7.

In addition, Hejia argues that the Department pins its entire decision to use SOO data on its speculation and creation of a high price per kilogram of single-clove garlic. Hejia argues that the actual SOO sales offer is not at a high price, and it is only the Department's assumptions about the quantity of the sales offer and the kilograms-per-unit that make it a high price. Hejia contends that the four sales offers it placed on the record corroborate each other, as all four are within \$0.05 per kilogram of each other, and that these four offers demonstrate that the Department's speculation has resulted in an aberrational price. Id.

Hejia also notes that the Department contends that it has "mitigated" the problems with the SOO sales offer by assuming that the price is for the individual piece of single-clove of garlic and assuming that 28 individual pieces equal one kilogram. Hejia argues that these assumptions are not relevant to either Hejia's sales price to the U.S. or to the price of the sales offers by the four Indian companies. For both Hejia's sale and the four sales offers, it is only necessary to know the price per kilogram. Hejia contends that the number of cloves in a kilogram is irrelevant, except to achieve the assumed price per kilogram by the Department's SOO offer. Id. at 4. Indeed, Hejia argues, the Department admits that the four sales offers have an advantage over the SOO sales offer in that they do specify a unit of measure, although they, too, are not contemporaneous with the POR. Id. at 5. Hejia also contends that the Department completely fails to even address its speculation as to the quantity at issue in SOO's incomplete sales offer. Hejia argues that the Department offers no explanation, much less justification, for why it speculated on the SOO quantity and the number of individual pieces that should be included in a kilogram of single-clove garlic. Id. at 6.

Accordingly, Hejia concludes that it is arbitrary and capricious for the Department to continue to use speculation and conjecture to derive an artificial price for SOO's sales offer and then claim that the SOO's derived sales offer is equally the best available information, despite the Department's acknowledgement that the SOO offer is "incomplete."⁵ *Id.* at 10.

Hejia also counters the Department's position that the prices of the four sales offers placed on the record by Hejia are low. According to Hejia, the Department justifies its view by comparing these sales offers to Hejia's actual sales price to the United States; however, Hejia argues that this comparison is inappropriate, because it is an apples-to-oranges comparison. Hejia contends that the Indian sales offers submitted by Hejia are not specifically destined for the United States, and that there is no record evidence indicating these sales are destined for the United States. Nor, Hejia argues, is there any record evidence that the market price in India is identical, or even close, to that in the United States. Hejia argues that the market price in each country is determined by numerous variables. Hejia contends that the purpose of these Indian offers is to reflect a surrogate input price for raw garlic to be further processed, not to corroborate a finished-garlic price from the PRC to the United States. *Id.* at 8.

Next, Hejia argues that the Department further obfuscates the issue by attempting to compare the four single-clove garlic offers in India with garlic prices of multi-clove garlic. Hejia contends that this is not the issue to be justified on remand. Hejia argues that the Department was required by the Remand Order to justify its decision to use the SOO sales offer, and the Department has failed to do this. Instead, Hejia claims, the Department has chosen to target the previously-accepted offers from four Indian companies of this remand, and spent an inordinate

⁵ Hejia cites to RHP Bearing Ltd. v. United States, 288 F.3d 1334 (Fed. Cir. 2002), citing Transactive Corp. v. United States, 91 F.3d 232 (U.S. App. D.C. 1996) ("an agency action is arbitrary when the agency offers insufficient reasons for treating similar situations differently.")

amount of time denigrating that data rather than justifying its own decisions regarding SOO data. See Hejia's Comments at 8.

Contrary to the Department's opinion, Hejia argues it has not stated that sales offers of Indian single-clove garlic are high priced as compared to Indian multi-clove garlic. Rather, Hejia claims that, in the underlying review, it argued that sales of PRC single-clove garlic to the United States are higher than sales of PRC multi-clove garlic to the United States. Hejia states that the Department is correct when it says there is no justification for the difference in market valuation between the SOO offer and the four offers found by Hejia. Hejia contends that those price differences exist only because of the Department's speculation in deriving an artificial price predicated on conjecture, rather than on substantial evidence on the record. Id. at 9.

In addition, Hejia disagrees with the Department's supposition that the only reason for these allegedly low offers submitted by Hejia is evidence not based on the record, i.e., that Hejia may have found other, higher prices and simply not reported those to the Department because they would have been adverse to Hejia. Hejia argues that the Department and Petitioners had every opportunity to find high prices and submit them on the record, but failed to do so. Id.

The Department's Position:

As stated above, the Department is continuing to calculate a surrogate value for single-clove garlic using a simple average of the FOB sales offer from SOO and the average of the four FOB sales offers submitted by Hejia. The Department is obligated to select surrogate values in NME cases using the best available information. See section 773(c)(1) of the Act. It is the Department's normal practice to determine which single source of information provides the best available information. See e.g., Certain Activated Carbon From the People's Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review, 75 FR

70208 (November 17, 2010). This particular case involves a single sale of single-clove garlic to the United States, a specialty product not before encountered in any segment under the order covering fresh garlic from the PRC. Despite extensive research during the administrative review, and no data offered by Hejia prior to the Preliminary Results, we were able to find only limited surrogate value information for single-clove garlic. Subsequent to the Preliminary Results, Hejia for the first time submitted four single-clove price quotes, each being only very recently available. Given the flaws in both the data obtained by the Department and the data submitted by Hejia, in these unusual circumstances, we determined to combine these sales offers as a reasonable means to determine the best available information in this unique case. We believe that the SOO offer, as interpreted by the Department, represents a surrogate value that could be deemed more probative than Hejia's offer data, given the source of the SOO offer, the timing of our research, and its consistency with Hejia's claim that the product sold is of a high value. The Department did not disregard entirely the information provided by Hejia, because while the Department recognizes that the SOO offer represented only one offer and the data about that offer was not complete, Hejia's offer data was significantly lacking given their "new arrival" timing, and substantial incongruity of their price offers with Hejia's claim regarding the qualities of its product and the high price that it commanded. As such, the Department continues to find that the surrogate value derived from the simple average of the FOB sales offer from SOO and the average of the FOB sales offers submitted by Hejia reflects the best available information on the record in accordance with section 773(c)(1) of the Act.

As described in the Department's analysis above, our preference, when selecting surrogate values is to use non-export values. See Carbazole Violet Final, and accompanying Issues and Decision Memorandum at Comment 3. In this case, however, all potential surrogate

values on the record were based on export sales offers for Himalayan pearl garlic from India⁶ that is physically similar to the single-clove garlic sold by Hejia.

The Department notes that the sales offers from Krishna, Jabs, and Rising Friendship submitted by Hejia after the publication of the Preliminary Results were identified as “new arrival” offers by the Alibaba website. See Final Calculation Memorandum at Attachment 1. The Department finds that this is an indication that the sales offers were posted on the Alibaba website after the Preliminary Results. The sales offer from Mani was posted on May 18, 2009, the day before Hejia filed its surrogate value submission which contained the sales offer, and therefore should also be considered a “new arrival.”⁷ See Hejia Surrogate Value Submission, at Exhibit 3. Despite an extensive search prior to the Preliminary Results, the Department did not find the four sales offers submitted by Hejia; the Department only found the SOO sales offer. Therefore, in weighing the probative value of the sales offer information on the record, the Department finds that the individual sales offers submitted by Hejia should be considered collectively and averaged with the SOO sales offer. Weighing the sales offer information submitted by Hejia in this manner is consistent with the Department’s finding, noted above, that it considers the individual sales offers submitted by Hejia, which appeared on third party websites at almost the same point in time and at nearly identical prices, to represent a single price point, as does the SOO price obtained by the Department prior to the Preliminary Results.

The Department believes that in this case, averaging the SOO offer and the four Hejia-submitted offers more appropriately reflects the point made by Hejia in the underlying proceeding, with which the Department agreed, that single-clove garlic (and by reference single-

⁶ All the sales offers on the record were for processed, export-ready single-clove garlic. (The SOO offer was from a producer/exporter while the offers submitted by Hejia were from exporters.)

⁷ The SOO sales offer is also shown on the Alibaba website from the same date but is not identified as a “new arrival.”

clove garlic bulbs) commands higher prices. In order to justify the unusually high price which called into question the bona fide nature of its single U.S. sale, Hejia claimed that single-clove garlic commands a substantial price premium compared to multi-clove garlic. See Supplemental Questionnaire Response at 9. Moreover, as discussed in the Final Results and Draft Remand Results, Hejia has submitted price information for single-clove garlic from several other countries which it claimed “substantiated” its position regarding the relatively high price of the single-clove garlic sold to its United States customer.⁸ On the other hand, Hejia submitted, as potential surrogate value information (to be used as normal value), certain Indian export sales offers for single-clove garlic, each of which is priced lower than any other price for single-clove garlic which Hejia placed on the record. In essence, Hejia has argued that the [] qualities of single-clove garlic warrant a high U.S. price while requesting that the Department ignore the same qualities when determining the surrogate value to calculate the normal value for single-clove garlic. Moreover, the Department disagrees with Hejia’s argument that we improperly compared actual prices for single-clove garlic in the United States and Germany to sales offers for “Indian garlic to no particular destination.” The Department used the Indian sales offers as the surrogate value for single-clove garlic, not, as Hejia contends, “to corroborate a finished garlic price from China to” the United States. As a practical matter, Hejia has not clearly articulated how the Department actually used the low Indian prices to “corroborate” its high U.S. price. To the contrary, we note that in the underlying new shipper review, Petitioners argued that the surrogate value information for Indian single-clove garlic submitted by Hejia undermined the “basis” for Hejia’s high U.S. sales price. Petitioners also argued that if the Indian prices for

⁸ Interestingly, Hejia maintains that the “domestic purchasing price is 2 or 3 times of the regular garlic purchasing price.” As such, Hejia contends that the purchase price for raw single-clove garlic bulb is as much as triple the price for multi-clove garlic. See Hejia’s February 1, 2009 supplemental questionnaire response, at 10.

single-clove garlic submitted by Hejia are considered representative, then Hejia's U.S. sale price could not be considered bona fide since the U.S. customer could have paid much less than the reported sales price for the same product from India. See Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China (PRC): Jinxiang Hejia Co., Ltd (Hejia) from Toni Page, Case Analyst, to Thomas Gilgunn, Program Manager (September 29, 2009) at 4. Despite these arguments, the Department determined that Hejia's high price was bona fide.⁹ Id. at 7.

We note that, in its comments on the Draft Remand, Hejia argues that it never claimed that all single-clove garlic commands a price premium over regular, garden variety multi-clove garlic. Rather, in its comments, Hejia claims that its position is that Chinese single-clove garlic is a premium product which commands a higher price than regular, garden variety Chinese multi-clove garlic. See Hejia's Comments at 9. Hejia also contends that market prices for single clove garlic in each country are determined by numerous variables." Id. at 8. That said, we note that Hejia itself has pointed out that "there is no record evidence" that the export sales offers for Indian single-clove garlic are for sales to the United States or anywhere else. Id. at 7. Thus, it is not clear how the variables of any particular market explains the lower price for Indian single-clove garlic since, as Hejia points out, those sales offers are not to any particular market. Instead, Hejia is arguing that Chinese single-clove garlic has a premium price when compared to Chinese multi-clove garlic, while Indian single-clove garlic and Indian multi-clove garlic appear to have an inverse price relationship. We note that the only evidence on the record supporting Hejia's apparent contention that exported Indian single-clove garlic commands less of a price premium than Chinese single-clove garlic are the Indian sales offers which Hejia submitted for

⁹ There were no other U.S. prices of single-clove garlic on the record to compare with the sale in question.

surrogate valuation purposes. Hejia appears to be maintaining that while Indian single-clove garlic and Chinese single-clove garlic are physically comparable products, their respective prices do not respond similarly to market variables.

The proposed surrogate value information submitted by Hejia, similar to the SOO sales offer, are sales offers for processed, export-ready, Indian single-clove garlic. Our analysis of these sales offers for processed, export-ready, Indian single-clove garlic placed on the record by Hejia for surrogate value purposes are significantly lower than all other prices for processed, export-ready single-clove garlic (placed on the record by Hejia) and are even lower than the surrogate value for raw, unprocessed garden-variety, multi-clove Indian garlic bulb on the record of this review. Simply put, the Department finds it unreasonable to expect that the cost of acquiring processed, export-ready, single-clove garlic, which Hejia contends commands a premium price, would be less than the price of acquiring raw, multi-clove garlic bulbs.

In light of this apparent contradiction, the Department does not consider that each of the four sales offers submitted by Hejia after the Preliminary Results have the same probative value as the SOO offer. The processed, export-ready prices listed in the Hejia-submitted sales offers for surrogate value purposes are very low when compared to all price data for single-clove garlic on the record. Indeed, the other price data for single-clove garlic submitted by Hejia, to support its position that the high price of its U.S. sale of single-clove garlic was justified because single-clove garlic is a [] product which commands a premium price, is four to twelve times higher than the price range for the Hejia-submitted surrogate value data.

Finally, as discussed in the Final Results and Draft Remand Results, the Department acknowledges that the SOO sales offer does not explicitly specify a unit of measure. However,

the Department mitigated this deficiency by utilizing a conservative estimate that the unit is a clove and that 28 single-clove garlic bulbs comprise a kilogram.¹⁰

Comment 2: Averaging Methodology for the Five Sales Offers

Hejia's Comments:

Hejia argues that the Department has a longstanding policy of using as much data in the surrogate country as available, that constitutes the best available information, to meet its standard of using country-wide data. By taking four individual sales offers submitted by Hejia and combining them into one price, Hejia contends that the Department has failed to implement that policy in the underlying review. Rather, Hejia claims, the Department decided, without any reasoned explanation of why it is important, or even relevant, to combine four offers into one and then average that one with “an incomplete, disadvantaged, artificially-derived sales offer from SOO.” Hejia argues that the Department’s statement that these offers are virtually identical in price and in the time, in which they were offered to be an important factor in combining them into a single offer, is unpersuasive. Hejia argues that the Department has failed to provide a reasoned justification to support that conclusion. See Hejia’s Comments at 12.

Hejia also disagrees with the Department’s position that averaging four offers into one combined sales offer “more appropriately reflects the point that Hejia argued and with which the Department agreed, that single-clove garlic (and by reference single-clove garlic bulbs) command higher prices.” See Draft Remand Results at 14. Hejia argues that the Department

¹⁰ The Department calculated the 28 cloves-per-kilogram quantity by counting the number of cloves visible in the picture of single-clove garlic bulbs found in Exhibit SA-11 of Hejia’s March 30, 2008 questionnaire response. These images contain packages of single-clove garlic bulbs being sold in ¼ kilogram containers. The Department counted seven visible cloves in each bag, and conservatively calculated 28 single-clove garlic bulbs per kilogram (seven cloves multiplied by four ¼ kilogram bags results in 28 single-clove garlic bulbs per kilogram). The Department’s calculation was conservative because any additional unseen single-clove garlic bulbs in the photographs would only increase number of units calculated to be in the SOO sales offer and increasing the surrogate value for single-clove garlic bulbs. Furthermore, if the Department used an estimated based on information gleaned from verification, there would have been 51 single-clove garlic bulbs per kilogram.

again fails to provide a reasoned explanation. Hejia contends it argued in the underlying new shipper review that single-clove PRC garlic sold to the United States is higher priced than normal PRC garlic sold to the United States. Hejia argues that there is no nexus between Hejia's position and the price of single-clove garlic in India. Hejia states that these are completely different markets, with different factors influencing prices. Therefore, Hejia holds, the Department has provided no reasoned explanation to justify its position. See Hejia's Comments at 13. According to Hejia, the Department has not only failed to justify its original explanation, but now offers an entirely new justification which is also flawed, i.e., that the four offers found by Hejia are so close in price and so close in time that they should be deemed to be a single offer. Id.

Hejia also argues that the Department claims the SOO data to be better, in part, because the Department found the data. Hejia states that there is no justification on which to base such a decision, and that this decision is not based on evidence on the record. Further, Hejia holds that the Department cites no authority to assume that price data found prior to a preliminary result is more valid than data found after, and does not provide any reasoned explanation for this finding. Id. at 6, 13.

In addition, Hejia submits that the Department indicates that so-called internet offers stating "new arrivals" are somehow suspect. Hejia likens this idea to saying that an advertisement for "fresh" bread is suspect when compared to an advertisement for "bread." Again, Hejia alleges that the Department offers no reasoned explanation as to why new arrivals are suspect. See Hejia's Comments at 6. Moreover, Hejia notes that the Department fails to admit that while Hejia found the data after the Preliminary Results, two of the offers were made prior to the Preliminary Results. See Hejia's Comments at 6, 13. Fourth, Hejia argues that the

Department makes an “about face” and no longer finds any of the four offers submitted by Hejia to be the best available information. As such, Hejia contends that the Department’s remand redetermination was not an attempt to justify its decision in the Final Results. Rather, Hejia argues that the Department used the remand redetermination to disavow its Final Results and essentially issue a new final result. See Hejia’s Comments at 13-14.

Finally, according to Hejia, the Department is essentially arguing that its normal attempt to collect the maximum amount of country-wide data for any surrogate value would lead to exploitation by the parties as they attempt to overload data onto the record that is beneficial to them. See Hejia’s Comments at 14. Hejia claims that this argument is a rationalization by the Department to end its longstanding policy of collecting country-wide data, rather than data from only one or two producers in the surrogate country. Hejia states that the Department provides no reasoned explanation to abandon its longstanding policy and to now collect only minimal data. Hejia argues that in the underlying review, no party overloaded the record with data on sales offers. Hejia submitted four offers; the Department placed one offer on the record; Petitioners placed no information on the record. Hejia claims that the Department has made numerous decisions over the years in countless proceedings that only one or two sales/offers do not constitute countrywide information, and that now the Department seems to be stating that it does not want countrywide information because that would lead to submission of endless offers. Hejia argues that the Department cannot require countrywide data and at the same time limit the submission of such data. Id. at 15.

The Department’s Position:

The Department disagrees with Hejia that it is our long standing practice to use as much data in the surrogate country as available, or that the best information available would be in any

way linked to the volume of the data. See Hejia’s Comments at 12. The Department notes that, in accordance with section 773(c)(1) of the Act, its practice when selecting the best available information for valuing FOPs “is to select, to the extent practicable, surrogate values which are publicly available, product-specific, representative of a broad market average, tax-exclusive and contemporaneous with the {period of review}.” The Department’s strong preference to value inputs using data based on a broad range of actual transactions that are representative of commercial prices in the surrogate country over price quotes and sales offers. See Carbazole Violet Pigment 23 from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and accompanying Issues and Decision Memorandum at Comment 5. Such broad-based, public data are both neutral and independent of the views of the interested parties. However, where broad-based, public price data based on actual transactions are not available, as in this case, the Department may have no choice but to rely on sales offers, price quotes, price lists or other information. See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Refined Brown Aluminum Oxide (Otherwise known as Refined Brown Artificial Corundum or Brown Fused Alumina) from the People's Republic of China, 68 FR 55589 (September 26, 2003) and accompanying Issues and Decision Memorandum at 9; see also Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results and Partial Rescission of New Shipper Reviews, 73 FR 36840 (June 30, 2008) and accompanying Issues and Decision Memorandum at Comment 3. Hejia has equated multiple “Indian sales offers to no particular destination” with published countrywide price data which represent broad market averages. See Hejia’s Comments at 7. Moreover, Hejia equates the Department’s practice of using published countrywide price data which represent broad market averages with simply averaging all surrogate value information on a given record. Neither of Hejia’s positions

represents the Department's practice. In the instant review, despite extensive research by the Department, and no country-wide price data otherwise provided by the parties, the Department has been forced to choose a surrogate value that is less than ideal.

The Department has a strong preference for using publicly available prices to value FOPs. Further, factor values should be prices that are broadly available in the surrogate economy.¹¹ For example, if the Department has information on what a particular producer pays for an input and also has information on what producers economy-wide pay for the same input, the Department would choose the latter (all other things being equal). The Department generally does not use price quotes because they are usually not publically available and are often not contemporaneous to the POI/POR.¹² As a result, the criteria or history that led to these quotes is unknown and easily subject to manipulation. Furthermore, the market price might fluctuate significantly over time.

The Department also disagrees with Hejia that the Department has provided no reasoning for its treatment of the four sales offers Hejia has placed on the record. The Department has noted several apparent and potential deficiencies with these price quotes. First, contrary to Hejia's claims, the information does support a finding that at least three of the four quotes were posted on the website after the Preliminary Results. Furthermore, these prices for processed export-ready single-clove garlic are not only well below Hejia's export prices, but also below the price for multi-clove garlic bulbs.

¹¹ Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China, 62 FR 61964 (November 20, 1997).

¹² See generally, Certain Frozen Fish Fillets from Vietnam, 68 FR 37116 (June 2003) and the accompanying Issues and Decision Memorandum at 81.

Therefore, the Department continues to find that averaging Hejia's four sales offers together, and then averaging that value as a single offer with the SOO data, creates the best information available for a surrogate value for single-clove garlic.

Comment 3: Financial Ratios and SOO as a Garlic Processor

Hejia argues that the Department has incorrectly included financial ratios twice in its calculation of garlic values and, additionally, has been inconsistent in its treatment of SOO as a processor of garlic. First, Hejia argues that there is no record evidence to suggest that SOO was a processor of garlic. Hejia claims that the record evidence shows that the Department found SOO (based on information from its own website) to be neither a producer nor a processor of garlic. See Preliminary Analysis Memorandum at 4; see also Hejia's Comments at 15.

Further, Hejia argues that the Department is attempting to value raw garlic to be processed by Hejia into finished garlic, not to value finished garlic that has already been processed. Hejia contends that SOO is selling finished garlic which has already been processed. Therefore, Hejia alleges, by including the financial ratios for processing raw garlic into finished in SOO's offer, as well as the offers for the other four companies, the Department is valuing a finished product. Lastly, Hejia argues that the Department is double counting because it has added these same financial ratios to Hejia's processed garlic costs. Based on this, Hejia concludes that the Department should exclude the application of financial ratios to the SOO sales offers. Id. at 16.

Department's Position:

The Department has not double counted financial ratios in its calculation of Hejia's normal value. As the surrogate value the Department is using for single-clove garlic is for a finished product, there is no building up of normal value using factors of production as is

normally done in NME cases. In the instant case, Hejia's normal value is the simple average FOB sales offer of: 1) the SOO sales offer; and 2) the average of four sales offers placed on the record by Hejia, minus trading company profit, SG&A, and overhead expenses, which were deducted from the four sales offers provided by Hejia. Further, each of the sales offers used in the calculation were deflated to make them contemporaneous with the POR. The Department did not increase, as alleged by Hejia, the normal value by including financial ratios for Hejia, as the manufacturing company financial ratios are presumed to already be included in the average sales offer price the Department calculated.

As explained in the Preliminary Results and the Issues and Decision Memorandum accompanying the Final Results, for the purposes of the Preliminary Results, the Department determined that the sales offer for single-clove garlic from SOO and the sales offer information submitted by Hejia represented prices to be at two different stages of distribution. Because, in the Preliminary Results, the Department determined SOO to be a trading company, the Department assumed that the SOO sales offer includes not only the costs accumulated by the manufacturer of the garlic, but also a mark-up by SOO for its trading company profit, SG&A, and overhead expenses. Therefore, in order to put the SOO sales offer at the same level as the Hejia FOB price, the Department deducted profit, SG&A, and overhead expenses associated with SOO as a trading company.

However, based on an analysis of information on the record, for the Final Results the Department determined that SOO was an ISO certified manufacturer and exporter of garlic products. The record indicates that SOO exports products that it produces. See Hejia Preliminary Calculation Memorandum at Attachment IV. The record also indicates that Hejia exports products it produces. Thus, neither SOO or Hejia appear to sell through trading

companies. As such, the Department did not need to make an adjustment to deduct SOO's profit, SG&A, and overhead expenses as a trading company. As a manufacturer/exporter, SOO's FOB sales offer was at the same level as Hejia's FOB sale. However, as the SOO sales offer was subsequent to the POR, the Department still deflated the SOO sales offer to be contemporaneous to the POR.

For the Final Results, based on information in the four sales offers submitted by Hejia, the Department determined that these four companies appeared to be trading companies. Specifically, there is no indication in the surrogate value information submitted by Hejia that any of the companies were manufacturers. As such, for the purposes of the Final Results, we deducted the profit and SG&A (including interest and depreciation) based on financial ratios calculated from the Asian Tea & Export's financial statements from this average price (as we had done for SOO in the Preliminary Results). The Department also deflated this average price to be contemporaneous to the POR.

The Department then averaged these adjusted sales offer prices, as described above and in the Final Results, and compared them with Hejia's U.S. sales price, minus ocean freight and other shipping charges. Because this averaged price is for finished single-clove garlic, and not a value for the raw garlic bulb input, the Department did not include in its calculation of normal value Hejia's reported FOPs for raw garlic consumed, labor, or any other inputs related to the production of this product by Hejia. The Department also did not increase Hejia's calculated normal value using financial ratios that would be attributable to Hejia. Therefore, the Department finds that it did not double count financial ratios in the Final Results.

Comment 4: Post Hoc Determination

Hejia maintains that the Department's Draft Remand Results did not fully address its case brief but instead, made impermissible post hoc decisions. See Hejia's Comments at 3-4, 6, 9-10, 13, 14, and 16. Citing to Hiep Thanh Seafood Joint Stock Co v U.S., Slip Op. 2010-125 (US CIT) (November 5, 2010) and Burlington Truck Lines v. U.S., 371 U.S. 156, 168-169 ("The courts may not accept . . . counsels post hoc rationalizations for agency action."). Hejia maintains that the Department should have "justified its original decisions in the underlying review rather than making new decisions." See Hejia's Comments at 16.

The Department's Position:

The Department disagrees with Hejia's allegation that the Department has engaged in "post hoc" rationalization. While appellate counsel may not justify and make post hoc rationalizations for the Department in litigation, the Remand Order permitted the Department to "reevaluate the evidence in the record and issue a remand redetermination, consistent with its reevaluation that fully explains the basis for {the Department's} conclusions." See Remand Order; see Habas Sinai Ve Tibbi Gazlar Istihsal Endustrisi A.S. v. United States, 31 CIT 1793, 1801-02 (Ct. Int'l Trade 2007) ("Litigation counsel's post hoc rationalizations are no substitute for the agency's own reasoned decisionmaking on the record. And an agency's action may be upheld, if at all, only on the grounds articulated by the agency itself."); see also Burlington Truck Lines, Inc. v. United States, 371 U.S. 156, 168-69 (1962). Therefore, Hejia is wrong in contending that the Department was not permitted to reevaluate the evidence and issue a new decision. The

Department has fully complied with the Court's Remand Order and has fulfilled the purpose of the remand.

E. Final Results of Redetermination

Pursuant to the Court's order, the Department has reevaluated the evidence, reexamined its decision, and has fully explained the basis for its calculation of the surrogate value of the single-clove garlic bulb. Based on this reconsideration, the Department has determined that its original surrogate valuation was appropriate. Should the Court affirm this remand redetermination in full, and once the time limit for appeal has passed, the Department will issue instructions to U.S. Customs and Border Protection in accordance with the results of this redetermination.

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

Date