Taian Ziyang Food Company, Ltd., Taian Fook Huat Tong Kee Foodstuffs Co., Ltd., Zhengzhou

Harmoni Spice Co., Ltd., Jinan Yipin Corporation, Ltd., Linshu Dading Private Agricultural

Products Co., Ltd., Sunny Import and Export Co., Ltd. and Jinxiang Dong Yun Freezing Co., Ltd.

v. United States

637 F. Supp. 2d 1093 (Ct. Int'l Trade 2009)

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

SUMMARY

The Department of Commerce ("the Department") has prepared these final results of

redetermination pursuant to a remand order from the Court of International Trade ("the Court")

in *Taian Ziyang Food Company, Ltd., et al. v. United States*, 637 F. Supp. 2d 1093 (Ct. Int'l

Trade 2009) ("*Taian Ziyang*").

In *Taian Ziyang*, the Court remanded to the Department the following issues: the

valuation of garlic seed; the method of valuation and surrogate value applied to respondents' use

of water; the methodology the Department used to determine a wage rate for respondents' use of

labor; the valuation of leased land; the surrogate value applied to respondents' packing cartons;

the surrogate value applied to respondents' plastic jars; and the surrogate value applied to

respondents' use of ocean freight.

The Department has reconsidered the surrogate values for garlic seed, labor, packing

cartons, plastic jars and ocean freight. The Department has further determined that it is

appropriate to value the energy costs associated with pumping water instead of valuing the water

itself, and that it is not appropriate to separately value leased land as this is accounted for in the

surrogate financial ratios calculated from the financial statements of two Indian tea producers.

Finally, the Department has determined that it is appropriate to continue to use the wage rate

methodology applied in Remand I, but has modified the pool of data from which it derives its analysis using the data sources it uses in its current practice.

BACKGROUND

On June 13, 2005, the Department published the final results of the 2002-2003 administrative review of the antidumping duty order on fresh garlic from the People's Republic of China. *See Fresh Garlic from the People's Republic of China*, 70 FR 34082 (June 13, 2005), and accompanying Issues and Decision Memorandum ("*Final Results*"). Taian Ziyang Food Company, Ltd. ("Taian Ziyang"), Taian Fook Huat Tong Kee Foodstuffs Co., Ltd. ("FHTK"), Zhengzhou Harmoni Spice Co. ("Harmoni"), Ltd., Jinan Yipin Corporation, Ltd. ("Jinan Yipin"), Linshu Dading Private Agricultural Products Co., Ltd. ("Linshu Dading"), Sunny Import and Export Co., Ltd. ("Sunny") and Jinxiang Dong Yun Freezing Co. ("Dong Yun"), Ltd., subsequently challenged several decisions from the final results before the Court. The Court granted the Department leave to correct ministerial errors and on September 28, 2005, the Department published the amended final results. *See Notice of Amended Final Results of Antidumping Duty Order on Fresh Garlic form the People's Republic of China*, 70 FR 56639 (September 28, 2005), and accompanying Issues and Decision Memorandum ("*Amended Final Results*").

On October 5, 2005, this Court granted the Department's request for a voluntary remand to amend the administrative record to include certain wage rate data, and to reexamine its calculation of the People's Republic of China's ("PRC's") wage rate. On December 5, 2005, the Department issued its final results of redetermination with regard to the wage rate issue ("Remand I").

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On June 29, 2009, the Court issued its draft redetermination in *Taian Ziyang*. On January 29, 2010, the Department released to parties its draft redetermination for the valuation of garlic seed, retained garlic seed, wage rate, water use, cardboard cartons, leased land, plastic jars, and ocean freight ("*Draft Redetermination of Taian Ziyang*"). Comments were initially due on February 17, 2010. On February 17, 2010, Kelly Drye and Warren, LLP, requested on behalf of petitioners an extension of time to comment until February 19, 2010. *See* Letter from Kelley Drye and Warren, LLP, regarding: Remand Redetermination in the Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China, dated February 17, 2010. The Department granted an extension to all Interested Parties to comment by February 19, 2010. *See* Memorandum from Analyst to File, dated February 17, 2010. Harmoni, Jinan Yipin, Linshu Dading, and Sunny were the only Interested Parties to comment. *See* Letter from Grunfeld, Desiderio, Lebowitz, Silverman and Klestadt, LLP, regarding: Comments on Draft Redetermination, dated February 19, 2010 ("GDLSK Comments"). On March 3, 2010, the Department released to Interested Parties a revised wage rate calculation for comment. On March 10, 2010, we received comments from GDLSK respondents[1] on the revised wage rate calculation. We have addressed Harmoni's, Jinan Yipin's, Linshu Dading's, and Sunny's comments regarding the revised wage rate calculation, as well as comments from GDLSK Comments, below in section IX, "Comments from Interested Parties."

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[1] Zhengzhou Harmoni Spice Co. Ltd., Jinan Yipin Corporation, Ltd., Linshu Dading Private Agricultural Products Co., Ltd., and Sunny Import and Export Ltd. ("GDLSK respondents"), are all represented by Grunfeld, Desiderio, Lebowitz, Silverman and Klestadt, LLP.

ANALYSIS

I. The Appropriate Surrogate Value for Seed

In the *Final Results*, the Department considered three potential sources for surrogate values for respondents' garlic seed: 1) Indian import statistics data as reported by the World Trade Atlas ("WTA") for Harmonized Tariff Schedule ("HTS") category 0703.20.00 "Garlic Fresh or Chilled"; 2) prices for Indian varieties of garlic as set forth in several "News Letters" of the Indian National Horticultural Research and Development Foundation ("NHRDF"); and 3) price data from the Indian Agricultural Marketing Network ("Agmarknet"). We concluded that the NHRDF price data for the Agrifound Parvati, Yamuna Safed-3 and Agrifound White varieties of garlic were the best available information on the record to value garlic seed because the bulb diameter and number of cloves per bulb match the seed used by the respondents in these key characteristics. *See Final Results* at 19. The Department declined to use both the Indian import data and the Agmarknet data to value garlic seed because they were not as specific to the input as the pricing information for the three varieties within the NHRDF data.

In *Taian Ziyang*, the Court remanded the valuation of garlic seed to the Department, holding that the Department did not provide sufficient findings of fact supported by substantial record evidence to support its claim that the NHRDF price represents the best available information for valuing garlic seed. *See Taian Ziyang,* 637 F. Supp. 2d at 1125. Specifically, the Court emphasized that we had failed to provide "a complete description of 'high-yield' varieties represented in the NHRDF data." The Court went on to state that the assumption that a high price is indicative of a large bulb diameter was insufficient to demonstrate that NHRDF surrogate values were representative of the respondents' input. *See Taian Ziyang,* 637 F. Supp.

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2d at 1126. On remand, in accordance with the Court's order, the Department has reevaluated the three data sources and continues to find that the NHRDF data are the best available information for valuing respondents' garlic seed for the reasons described below.

During the course of this remand proceeding, we placed on the record the *Market Research Report on Fresh Whole Garlic in India* ("*Market Research Report*"). *See* Letter from the Department regarding: Record addition to Remand Redetermination on 2002-2003 review of Fresh Garlic from the People's Republic of China, dated November 19, 2009. The *Market Research Report* was compiled by the Fresh Garlic Producers Association and its individual members, Christopher Ranch, LLC, Farm Gate, LLC, The Garlic Company, Valley Garlic, and Vessey and Company, Inc. ("Petitioners"), who are domestic producers of the like product. The *Market Research Report* was submitted to the records of both the 2001-2002 and 2003-2004 administrative reviews. In addition, we also invited interested parties to propose alternative surrogate values for garlic seed. While the GDLSK respondents generally objected to the placement of new information on the record, no interested party presented any new alternative surrogate values for garlic seed for the record or commented on the specific information contained within the *Market Research Report*. *See* Letter from Grunfeld, Desiderio, Lebowitz, Silverman and Klestadt, LLP, regarding: Comments Regarding the New Information Placed on the Record for the Remand, dated November 30, 2009.

Based on our review, we determined that record evidence demonstrates that with a bulb size well in excess of 5 cm in diameter, the garlic bulb grown by respondents is far larger than typical native Indian garlic strains, which usually have bulb diameters between 2 and 4 cm. *See Market Research Report* at 4. Specifically, Linshu Dading reported garlic bulb diameters of 6

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cm and larger.[2] Included in Jinan Yipin's questionnaire responses was a brochure indicating that

it sold garlic with bulb sizes ranging from 5 cm to 6.5 cm.[3] Huaiyang Hongda Dehydrated

Vegetable Company's questionnaire response indicated that it sold garlic with bulb diameters of

6 cm to 7 cm to the United States during the POR.[4] Taian Ziyang indicated in its response to the

Department's first supplemental questionnaire that it sold "top grade garlic with a size of over

six centimeters in diameter."[5] FHTK wrote in its response to the Department's first

supplemental questionnaire that the garlic it sold to the United States exceeded 5.5 cm in

diameter.[6] Dong Yun claimed in its questionnaire response that the garlic it sold to the United

States during the POR had bulb diameters of 5.5 cm to 6 cm.[7] As has been noted throughout this

proceeding, we reason that the quality and size of the garlic grown is strongly determined by the

kind of garlic seed used.[8] Specific varieties of garlic seed produce unique kinds of garlic bulbs.

Notable variations exist between strains in terms of bulb size, time to maturation, number of

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[2] *See* Letter from Grunfeld, Desiderio, Lebowitz, Silverman and Klestadt, LLP, regarding: Sections A and C Response of Linshu Dading Private Agricultural Products Co. Ltd.: Admin. Review of Fresh Garlic from the People's Republic of China (A-570-831), dated March 4, 2004, at 55.

[3] *See* Letter from Grunfeld, Desiderio, Lebowitz, Silverman and Klestadt, LLP, regarding: Sections A and C Response of Jinan Yipin Corporation Ltd.:   Administrative Review of Fresh Garlic from the People's Republic of China (A-570-831), dated March 4, 2004, at 68.

[4] *See* Letter from DeKieffer and Horgan regarding: Fresh Garlic from the People's Republic of China – Questionnaire Response Sections A, C, and D, dated February 26, 2004, at A-14.
[5] *See* Letter from White and Case LLP regarding: Fresh Garlic from the People's Republic of China, dated September 7, 2004, at 12.
[6] *See* Letter from White and Case LLP regarding: Fresh Garlic from the People's Republic of China, dated September 8, 2004, at 14.
[7] *See* Letter from DeKieffer and Horgan regarding: Fresh Garlic from the People's Republic of China – Questionnaire Response Sections A, C, and D, dated February 20, 2004, at 18.
[8] *See* Memorandum to the File through Program Manager regarding: Research on Chinese Garlic Production and Cost, dated November 29, 2004, at Attachment 1.

cloves, and even bulb color.[9] Accordingly, we find it reasonable to seek out a surrogate value

for garlic seed that could be used to produce a product similar to that of respondents.

As is demonstrated in the *Market Research Report*, the typical bulb diameter of the

Agrifound Parvati and Yamuna Safed-3 high yield garlic varieties the Department used to value

respondents' inputs falls within a similar range with a bulb diameter of 3.5 to 6.5 cm. *See*

Market Research Report at 14. Because the record now contains evidence that directly ties the

physical characteristics of respondents' input to those of particular NHRDF varieties, the fact

that the Department's surrogate value data source approximates the large, high-quality bulb

grown by respondents is supported by substantial record evidence.

In contrast, as was noted in the *Final Results*, the Indian HTS category for the input in

question is extremely broad, encompassing all garlic imported into India. *See Final Results* at

20; *see also* Letter from Grunfeld, Desiderio, Lebowitz, Silverman and Klestadt, LLP, regarding:

Surrogate Value Submission of GDLSK respondents: Administrative Review of Fresh Garlic

from the People's Republic of China (A-570-831), submitted September 7, 2004 ("GDLSK SV

Submission"), at exhibit 3. For example, the record does not contain any substantive information

to speak to the manner in which such garlic is shipped, be it as whole bulbs or loose cloves.

Additionally, there is no information on the record which speaks to the quality, size, or number

of cloves in the garlic imports from the market economy countries contained in the Indian import

data. As the input in question is exceptionally large, as noted above, such a broad category is not

as specific to the large bulb, high quality garlic seed used by the respondents. Accordingly, we

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[9] *See Market Research Report* at 12, 14 and 15.

continue to find the Indian import statistics inappropriate as a surrogate value source for garlic seed.

We additionally continue to find that the Agmarknet data do not represent the best surrogate value source for respondents' garlic seed. As we noted in the *Final Results*, the majority of garlic in the Agmarknet data are described as "other," "average," or even simply "garlic." *See* Letter from White and Case, LLP, regarding: Fresh Garlic from the People's Republic of China, dated January 6, 2005, at exhibit 1. Such broad product categories are insufficient for the valuation of respondents' large bulb, high yield input. While GDLSK respondents, along with Taian Ziyang and FHTK, have argued that the Agmarknet data represent a broad market average, (*see Final Results* at 14) the lack of product specificity in the Agmarknet data – and the high degree of product specificity required to value respondents' very particular seed input – causes the Department to find that the Agmarknet data are not the best surrogate value source on the record.

II. Whether a Surrogate Value Should be Applied to Harmoni and Jinan Yipin's Seed Input

In their responses to section D of the Department's questionnaire, Harmoni and Jinan Yipin reported that the garlic seed used to plant the garlic that was harvested during the POR was retained from the previous harvest.[10] Harmoni and Jinan Yipin argued in their case brief submitted during the underlying administrative review that "it is improper to apply a surrogate

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[10] *See* Letter from Grunfeld, Desiderio, Lebowitz, Silverman and Klestadt, LLP, regarding: Section D response of Zhengzhou Harmoni Spice Co., Ltd: Administrative Review of Fresh Garlic from the People's Republic of China, dated March 4, 2004 ("Harmoni Section D"), at 7; *see also* Letter from Grunfeld, Desiderio, Lebowitz, Silverman and Klestadt, LLP, regarding: Section D Response of Jinan Yipin Co., Ltd.: Administrative Review of Fresh Garlic from the People's Republic of China (A-570-831), dated March 4, 2004 ("Jinan Yipin Section D"), at 8.

value for purchased seed because it does not reflect the manufacturing experience of these companies."[11]

In the *Final Results*, the Department took this to mean that Harmoni and Jinan Yipin were advocating that no surrogate value at all should be used to represent their garlic seed inputs in their companies' dumping calculations. *See Final Results* at 19. The Department found that "seed must be valued even when a respondent has used retained garlic seed from a previous harvest." *See Final Results* at 21. Citing *Pacific Giant, Inc. v. United States*, 223 F. Supp. 2d 1336, 1342 (CIT 2002) ("*Pacific Giant*"), we noted that the Department must "focus on the quantity of inputs used by the PRC producers in valuing factors of production ("FOPs"), rather than on the costs associated with these factors in the PRC." *See Final Results* at 21.

In their brief to the Court, the GDLSK respondents clarified their argument and argued that, since their garlic seed was self grown and not purchased, the Department should not value their garlic seed based upon a surrogate value, but should instead use Harmoni's and Jinan Yipin's reported "growing FOPs" to value the seed used. *See* GDLSK Case Brief at 26. The GDLSK respondents further claimed that the use of a surrogate value in lieu of the growing costs for Harmoni's and Jinan Yipin's garlic seed is an application of an "intermediate input" methodology, and that such a methodology is inappropriate in this case. The GDLSK respondents maintained that the Department's application of *Pacific Giant* is incorrect. In support of this, the GDLSK respondents cite *Anshan I,* where, according to the GDSLK

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[11] *See* Letter from Grunfeld, Desiderio, Lebowitz, Silverman and Klestadt, LLP, regarding: Administrative Case Brief: Fresh Garli from the People's Republic of China (A-570-831), dated April 21, 2005, ("GDLSK Administrative Brief") at 3.

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respondents, the Court found *Pacific Giant* did not apply to cases involving self-produced intermediate inputs.

Upon clarification of the GDLSK respondents' arguments, the Department requested a voluntary remand of this issue so that the Department could fully respond to the arguments made by the GDLSK respondents with respect to this issue. The Court granted that request and ordered the Department to review this issue on remand. *See Taian Ziyang*, 637 F. Supp. 2d at 1127.

Petitioners in their rebuttal brief in the underlying administrative review argued that Harmoni and Jinan Yipin "do not offer any guidance as to how the Department can value garlic seed using the factors of production contained on the record for growing garlic."[12] Petitioners asserted that the main input in valuing garlic seed is the garlic clove itself, and that it is impossible to derive a value for garlic seed using the FOPs on the record. Petitioners further argued that the GDLSK respondents derived their per-unit consumption rates for garlic cloves by allocating total consumption over total POR production of fresh garlic. Petitioners noted that the denominator of the allocation used to derive the GDLSK respondents' per-unit consumption rates therefore includes the amount of garlic set aside and later used as seed. *See id.* at 30. Petitioners claim that, if the Department were to value garlic seed using only the growing factors of production, the Department would have to revise all of Harmoni's and Jinan Yipin's allocations used to derive their respective reported per-unit consumption rates to exclude the

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[12] *See* Petitioners' Rebuttal Brief: Ninth Administrative Review of the Antidumping Order on Fresh Garlic from the People's Republic of China, submitted April 25, 2005, ("Petitioners' Rebuttal Brief") at 29-30.

amount of garlic used for seed in the denominator in those equations. Petitioners concluded that

this would be both unnecessary and impracticable. *See id.*

In the *Draft Redetermination of Taian Ziyang*, the Department had determined that the

retained seed methodology, as proposed by the GDLSK respondents at the time, would either

omit a surrogate value for actual garlic seed consumed or would double count all growing FOPs

for Jinan Yipin and Harmoni. *See Draft Redetermination of Taian Ziyang* at 14. Upon further

clarification of Jinan Yipin's and Harmoni's argument, we have valued retained garlic seed using

the costs incurred to grow Jinan Yipin's and Harmoni's garlic seed, as discussed at Comment 2

below.

III. Water

In the *Final Results*, the Department valued the consumption of irrigation water for

GDLSK respondents and Dong Yun using the industrial tariff rates for use both inside and

outside the industrial areas of Maharashtra State in India. *See Final Results* at 25-26; *see also*

Memorandum to the File, "Fresh Garlic from the People's Republic of China; Administrative

Review for the Period November 1, 2002, through October 31, 2003: Factor Valuations for the

Final Results of the Administrative Review," dated June 13, 2005 ("Final FOP Memorandum")

at 2-3. During the course of the review, these respondents reported that they drew irrigation

water from nearby rivers or wells on their land and, as a result, did not pay for irrigation water.

See Taian Ziyang, 637 F. Supp. 2d at 1128.

The Department, citing *Pacific Giant**, Inc. v. United States*, 223 Supp. 2d 1336 (CIT

2002) ("*Pacific Giant*"), valued water separately as an FOP in the final results, and determined

that doing so does not result in double-counting. *See* Final FOP Memorandum at 2. The

Department based its rates on non-agrarian water rates, rather than the agrarian rates proposed by respondents, explaining that agrarian water rates for irrigation are highly subsidized by the Indian Government. *See Final Results* at 26.

In *Taian Ziyang*, the Court held that the Department ignored the provision of section 773(c)(4) of the Act, which specifies that the FOPs are to be valued based on the prices or costs of the factors in the chosen comparable market economy ("ME") country, and that the Department ignored section 773(c)(1)(B), which mandates that the Department value FOPs on the basis of "the best available information regarding the values of such factors in a ME country or countries considered to be appropriate." Thus, in *Taian Ziyang,* the Court held that nowhere in the final results did the Department seek to reconcile its reading of *Pacific Giant* and its determination on the valuation of water with the plain language of sections 773(c)(1)(B) and 773(c)(4) of the Act. *See Taian Ziyang,* 637 F. Supp. 2d at 1130.

The Court held that, although the Department may be required to value irrigation water as an FOP in this proceeding, nothing in *Pacific Giant* indicates that the value assigned to an FOP must be positive. *Id.* Thus, as the Court stated, if the record establishes that farmers in India - like the Chinese garlic producers in this proceeding - do not pay for irrigation water drawn from nearby rivers or wells on their land, the Department cannot assign to water a surrogate value greater than zero because, the statute instructs, and the courts have consistently reaffirmed, that FOPs are to be valued based on their cost or price in the selected surrogate ME country. *Id.* Consequently, the Court stated that if record evidence establishes that farmers in the surrogate ME obtain an input at no cost, it is improper and distortive to assign a positive value to that particular FOP. *See id.*

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Finally, the Court disagrees with the Department's determination to apply a surrogate value for industrial water to irrigation water obtained at no cost in India. *See Taian Ziyang,* 637 F. Supp. 2d at 1133. The Court held that the Department failed to evaluate adequately the record evidence on the cost of water in India – including the evidence on the nature and extent of government subsidization, if any.

Thus, the Court remanded the issue to the Department to 1) reconsider its surrogate value analysis for water use; 2) reopen the record, if appropriate; 3) detail its rationale for selecting from among the possible methods of valuing this factor (as supported by substantial evidence on the record); and 4) explain why the valuation method that it chooses yields the most accurate dumping margin possible. *See id.*

On remand, we have reviewed the record of this proceeding and have selected from among the possible methods of valuing this factor. The record of this review reveals the following information concerning the pumping costs incurred by the plaintiffs in this action, as well as the costs for irrigation in India. Jinan Yipin reported using diesel fuel to pump irrigation water to its farms.[13] Dong Yun, Harmoni, Jinan Yipin, Linshu Dading and Sunny reported the electricity consumption required to pump the water from its source into the fields.[14]

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[13] *See* Jinan Yipin Section D at 13 and exhibit 6. *See also* Letter from Jinan Yipin, Supplemental Section D Response of Jinan Yipin Co., Ltd: Administrative Review of Fresh Garlic from the People's Republic of China (A-570-831), dated September 1, 2004, at 4-5 and exhibit 8.

[14] *See* Letter from Dong Yun, Fresh Garlic from the People's Republic of China - Questionnaire Response Sections A, C, and D ("Dong Yun Section D"), dated February 19, 2004, at 8 and exhibit D-6. *See* Harmoni Section D at 10, 12 and 13, and exhibits D-4 and D-6; Letter from Harmoni, Supplemental Response of Zhengzhou Harmoni Spice Co., Ltd: Administrative Review of Fresh Garlic from the People's Republic of China (A-570-831), dated September 1, 2004, at 10; Letter from Harmoni, Supplemental Response of Zhengzhou Harmoni Spice Co., Ltd: Administrative Review of Fresh Garlic from the People's Republic of China (A-570-831), dated October 15, 2004, narrative (pages unnumbered) and exhibit 11; Letter from Linshu Dading, Section D Response of Linshu Dading Private Agricultural Products Co., Ltd., dated March 4, 2004, at exhibit D-6; and letter from Sunny, Section D Response of Sunny Import & Export Co., Ltd., dated March 4, 2004, narrative response (pages unnumbered) and

The information concerning irrigation costs in India is recorded as follows. Dong Yun

provided information on the record stating that Indian companies do not have to pay for

irrigation water drawn from their own wells.[15] In addition, Dong Yun provided a World Bank

Study from 1995 showing that farmers who pump water from their own wells do not pay for the

water they use to irrigate their crops. *Id.* at 2 and exhibit 2. Dong Yun further quoted the

International Water Management Institute ("IWMI") as saying that in 2001 in the Indian

province of Uttar Pradesh, farmers that own their own wells do not pay for water to irrigate their

land, and that self-owned wells are the largest source of water in Uttar Pradesh. *Id.* at 2 and

exhibit 3. Moreover, Dong Yun provided excerpts from the IWMI Annual Report for 2000-2001

stating that India is one of the largest users of groundwater (wells), and that the use of

groundwater (from wells) is uncontrolled and unregulated. *Id.* at 3 and exhibit 4. Dong Yun also

provided a statement from a book on rural development, Krishna, Anirudh, Uphoff, Norman and

Esman, Milton J., editors, *Reasons for Hope: Instructive Experiences in Rural Development,*

West Hartford, CT: Kumarian, 1996 *("Reasons for Hope"),* that most irrigation in India is

performed by wells that are fed by rainwater. *Id.* at 3-4 and exhibit 5. Finally, Dong Yun

provided a statement from the U.S. Agriculture Attaché's office in the American Embassy in

New Delhi stating that Indian farmers who use water from their own wells do not pay any fee for

it. *Id.* at 4 and exhibit 6.

We examined the surrogate financial statements used in the *Final Results* and found that

they did not provide information concerning the irrigation practices, and/or any expenses

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exhibit D-6; Letter from Sunny, Supplemental Questionnaire Response: Administrative Review of Fresh Garlic from the People's Republic of China (A-570-831), dated October 22, 2004, at 3.

[15] *See* Letter from Dong Yun, "Fresh Garlic from the People's Republic of China – Value of Water in India" ("Dong Yun Water Submission"), dated January 6, 2005, at 1-2 and exhibit 1.

pertaining to irrigation or irrigation machinery or equipment of either Perry Agro Industries

Limited ("Perry Agro") or Dhunseri Tea.[16] Therefore, we cannot use the surrogate financial

statements to determine the irrigation practices of the Indian farmers or to ascertain whether or

not separately valuing water as a material input would result in double counting this expense.

As a result of re-examining the information contained in the World Bank Study, IWMI

Annual Report, *Reasons for Hope*, and the statement from the American Embassy in New Delhi

concerning the pumping irrigation practices of Indian farmers, we have determined that the

information demonstrates that farmers in India who have access to wells on their property do not

pay for irrigation water. Therefore, we have determined that it is not reasonable to separately

value the consumption of water for farmers who, having access to well or river water, are not

otherwise obligated to pay either civil or private authorities for irrigation water. Therefore, for

this redetermination on remand, we find that valuing the pumping cost of water, rather than

valuing the water itself, yields the most accurate margins because it most closely matches the

irrigation practices of producers in the surrogate country. In addition, it fulfills the Department's

obligation to value FOPs in accordance with section 773(c)(4) of the Tariff Act of 1930, as

amended ("the Act"), which specifies that the FOPs are to be valued based on the prices or costs

of the factors in the chosen comparable ME country; and with section 773(c)(1)(B) of the Act,

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[16] *See* GDLSK respondents' SV Submission") at exhibit 29; Letter from GDLSK respondents, Rebuttal to
Petitioner's Surrogate Value Submission: Administrative Review of Fresh Garlic from the People's Republic of
China (A-570-831) ("GDLSK respondents Rebuttal SV Submission"), dated September 17, 2004, at exhibit 6 (for
Perry Agro); Letter from Fook Huat Tong Kee Pte. Ltd. and Taian Ziyang Food Co., Ltd., dated November 12, 2004,
at Attachment 1; letter from Petitioners, Ninth Annual Administrative Review of the Antidumping Duty Order on
Fresh Garlic from the People's Republic of China: Submission of Publicly Available Surrogate Value Information,
dated January 6, 2005, at Attachment 1 (for Dhunseri Tea); Letter from GDLSK respondents, Second Surrogate
Value Submission of GDLSK respondents: Administrative Review of Fresh Garlic from the People's Republic of
China (A-570-831), dated January 6, 2005, at exhibit 6 (for Moran Tea).

which mandates that the Department value FOPs on the basis of "the best available information regarding the values of such factors in an ME country or countries considered to be appropriate."

Therefore, in accordance with the remand order, we have valued water by calculating a surrogate value for diesel consumption used to pump water for Jinan Yipin and electric consumption for Dong Yun, Harmoni, Linshu Dading and Sunny. We applied the respective surrogate value for diesel and electricity to the reported consumption factor for diesel and electricity used to pump water by each respondent. We added to the surrogate value of diesel freight expenses for the distance between the diesel supplier and the producer. Finally, we excluded from our calculations the surrogate value for water.

IV. Wage Rate

A. **Background**

In the final results of the 9th 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 $0.83 for the PRC.[17] However, the expected wage rate surrogate value contained several clerical errors and the Department asked for and received a voluntary remand for the limited purpose of correcting those clerical errors in the wage rate calculation. *See* Defendant's Partial Consent Motion for Voluntary Remand (September 15, 2005); *see also* Final Results of Redetermination Pursuant to Court Remand (October 5, 2005) ("Redetermination I"). In Redetermination I, the Department recalculated a new wage rate of $0.85 using data from the "Base Year" of 2002. *See* Redetermination I at 18-19. (The "Base Year" is the year upon which the regression data are

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[17] *See Final Results* at 51-54 and *Notice of Amended Final Results of Antidumping Administrative Review: Garlic from the People's Republic of China*, 70 FR 56639 (September 28, 2005).

based and is two years prior to the year in which the Department conducts its regression

analysis.)

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

773(c)(4) of the Act and failed to provide the necessary evidence, explanation, and justification

to permit deviation from its standard factors of production methodology. *See Taian Ziyang Food

Company, Ltd. et al v. United States,* 637 F. Supp. 2d at 1137. The Court determined further that

the regulatory provision authorizing the regression-based wage rate methodology, 19 CFR

351.408(c)(3), is inconsistent with the Act and ordered the Department, upon remand, (if it

continued to find that it was necessary to apply a regression-based methodology), to "explain

that necessity *and* support its decision to utilize the particular methodology and dissimilar

information (*i.e.*, that which is "beyond" comparable market-economy-country data)." *See Taian

Ziyang* at 71.

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.[18] The Department has done all of this within the context of the

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[18] In reviewing the wage rate calculation that was used for calculating the antidumping margins in Redetermination I, the Department notes that the regression-based wage rate of $0.85, which had been calculated in Redetermination I, was based on a prior regression-based wage rate methodology. *See* Redetermination I at 1. The regression-based wage rate of $0.85 was not based on the current regression-based wage rate methodology outlined in the *Revised Methodology Notice*. Thus, the regression-based wage rate of $0.85 used was not based on the data sources, including all available data that meets the Department's selection criteria as outlined in the *Revised Methodology Notice*.

redetermination pursuant to remand before it, and as directed by the Court, has not presumed its

wage rate methodology is preferable to other surrogate values on the record, despite the clear

direction of such a preference in the language of its regulation.[19] 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.

Accordingly, on March 3, 2010, the Department released to parties the recalculated regression-based wage rate based on the current regression-based wage rate methodology outlined in the *Revised Methodology Notice*. See Memorandum to the File, through Wendy Frankel, Director, Office 8, Import Administration, and Charles Riggle, Program Manager, Office 8, from Julia Hancock, Special Assistant, Office of Senior Enforcement Coordinator, Subject: Release of Revised Wage Rate Calculation for Remand of 9th Administrative Review of Garlic from the PRC, (March 3, 2010) ("Revised Wage Rate Memo"). As outlined in the *Revised Methodology Notice*, the Department only relied upon wage data that have been reported one year prior to the Base Year. Thus, the Base Year for the revised regression-based wage rate calculation is 2002. Accordingly, we have only relied on wage data reported in 2002 or one year prior (2001).

Using the Base Year of 2002 or one year prior, the Department expanded the basket of countries upon which the regression is based to include all countries for which suitable data are available, rather than limiting these data to the fifty-six countries utilized in the *Final Results*. A broader data set represents the "best available information" for purposes of calculating the regression, as it better ensures accuracy and fairness. *See Revised Methodology Notice*, 71 FR at 61721. The revised data set, used in the revised regression-based wage rate calculation, includes all data that meet the Department's suitability requirements, which includes the availability and contemporaneity of the data, and that earnings data cover both men and women and all reporting industries in the country. The revised regression-based wage rate for China for this redetermination is $0.77.

[19] The Department respectfully disagrees with the Court that its regulation is inconsistent with the statute. *See Viraj Group, Ltd. v. United States*, 343 F. 3d 1371, 1376 (Fed. Cir. 2003). *See also Dorbest v. United States*, 462 F. Supp. 2d 1262, 1292 (CIT 2006), on appeal 2009 – 1257, -1266 (affirming The Department's revised methodology as consistent with its regulation and statute) and *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*")(explaining that the new methodology is consistent with its regulation and statute).

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

"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 GNIGNI 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 04.1*"). 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 data for a specific FOP from the selected surrogate country is unavailable

will the Department look at data from another significant producer of comparable merchandise

for surrogate valuation purposes.[20]

In applying the surrogate country selection process to products from the PRC subject to

investigation or review, the Department normally selects India as the primary surrogate market

economy country, *see, e.g., ISOS Final 2005*; *Malleable Pipe Fittings Final 2006; KASR 2009,*[21]

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[20] *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).

[21] *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*

which was also selected as the primary surrogate country in the case subject to this remand

redetermination, *Fresh Garlic Final 2005*. 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 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, as the Department's own analysis indicates and

as discussed below, there is wide variance in wage rates between comparable economies.[22]

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*

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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*.

[22] *See* Annex II.

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. More importantly, in all countries, labor policies are dictated by socio-economic factors 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. However, when the surrogate being used is for labor, which is not a traded commodity, these differences 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 correlation 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

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Organization ("ILO"), observed hourly wage rates for market economy countries with national incomes below US $1,000 range from US $0.21 to US $0.94 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 $960) ranged from US $0.21 to US $1.43. *See* Annex II (Wages and GNI). In other words, on average, as GNI increases across economies, 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.[23] The Department's revised 2002 regression dataset attached hereto illustrates this variability. *See* Annex II. 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 $0.21 to US $0.74, 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 2002 dataset, US $0.21, despite the fact that its GNI is far larger than many other countries. 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.

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[23] *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 shows what the expected wage rate for India might be using a single wage rate method.

Table 1

Estimating India's Wage Rate[24]

Table 1 presents the results of four methods for estimating what India's wage rate <u>could</u> have been in 2002, given its **GNI of U.S. $470**, as well as the difference between these estimates and the **actual reported hourly wage of U.S. $0.21**, that India reported to the ILO in 2002.

Single Wage Rate		Average Closest Eight		Average $750-range		Average $1,500-range	
Wage	Difference From 0.21	Wage	Difference from 0.21	Wage	Difference from 0.21	Wage	Difference from 0.21
0.33 to.74	0.12 to 0.53	0.67	0.46	0.53	0.32	0.8	0.59

As the table shows, because India's wage rate is so low relative to its GNI, each method of

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[24] 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 $470. *See* Annex II (Egypt 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 $470. *See* Annex II (Pakistan, Mongolia, Nicargua, Sri Lanka, Paraguay, Albania, Egypt, and Ecuador). 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 $470. *See* Annex II (Pakistan, Mongolia, Nicargua, Sri Lanka, and Paraguay for economies with GNIs approximately US $750 higher and lower than US $470) (Pakistan, Mongolia, Nicaragua, Sri Lanka, Paraguay, Albania, Egypt, Ecuador, Kazakhstan, Macedonia, Guatemala, Jordan, Bulgaria, Iran, and Colombia for economies with GNIs approximately US $1500 higher and lower than US $470). Each method relies on all data available in The Department's 2002 expected NME wage rate, not including India's data.

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 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 correlation 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.

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 analysis[25] to estimate a linear relationship between per-capita

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

"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

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[25] 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 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.

as well. *See id.* 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.

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 *World Development Indicators*,

which the Department refers to as the "Base Year." For example, the Department relied upon

data from 2002 to calculate NME wages in 2004, *i.e.,* the "Base Year" for the 2004 calculation

was 2002. 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.

1. 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 5 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 the inflation of data would reduce the accuracy of the calculation, as inflated 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 inflating 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 2002. Accordingly, the Department has relied only on ILO wage data reported in 2002 or one year prior, *i.e.*, 2001.

2. 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.[26] The ILO defines "earnings" under chapter 5 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 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.

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[26] For a more detailed discussion of how the Department prioritizes information, *see Revised Methodology Notice*, 71 FR at 61722.

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.ord/unsd/cr/family2.asp?Cl=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.

3. Consumer Price Index Data and Exchange Rate Data

Once hourly figures were calculated based on the wage rate data discussed above, the wage rate data from 2001 were adjusted to the Base Year, 2002, on the basis of the CPI for each country, as reported by the IMF's *International Financial Statistics*.

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 for each country for which all the above data are available.

4. 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 obtain 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: $\text{Wage}\{i\} = \text{Y-intercept} + \text{X-coefficient} * \text{GNI}$. 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 "explain that necessity *and* support its decision to utilize the particular methodology and dissimilar information (*i.e.*, that which is "beyond" comparable market-economy-country data)." *See Taian Ziyang 2009* at 71. In other words, the Court directed the Department to explain how its chosen surrogate value 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"**

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 polices. On the other hand, the Department's regression based methodology is a <u>variable</u> average, which smoothes out the variations in the data, <u>and</u> 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%.

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Table 2

Indian Wages from ILO[27]

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.

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.

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[27] 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.

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 2004 calculation for purposes of this remand, observed wage rates did not increase in lockstep with increases in GNI in the four countries with GNI less than U.S. $1,000: *e.g.,* Nicaragua, with a GNI of U.S. $720, had reported a wage rate of US $0.94 per hour, while Sri Lanka, with a GNI of U.S. $850, had reported a wage rate of US $0.33 per hour. *See* Annex II. 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.[28] 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.

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[28] 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

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 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.

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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.

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 <u>additional</u> data from countries that are not at a level of economic development comparable to the PRC or are not significant producers of subject 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 it had to "utilize dissimilar information (*i.e.,* that which is "beyond" comparable market-economy-country data)." *See Taian Ziyang 2009* at 71. 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

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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 revised methodology addresses variability in wage rates between comparable economies, while at the same time acknowledging the strong correlation 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 maybe 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 subject merchandise and countries that do not produce subject merchandise, the Department's use of data "beyond" that described in the Act is both logical and permissible.

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 consistent with the requirements of sections 773(c)(1) and (4) of the Act. Furthermore, in accordance with the Court's order, the Department has explained on remand in

great detail the necessity of using this methodology, which includes the use of information "which is beyond comparable market-economy-country data" in deriving the best available surrogate value for a PRC wage rate on the administrative record. This very same methodology has been 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.

V. Leased Land

In the *Final Results,* the Department calculated a surrogate value for leased land used by respondents because the Department could not determine whether the cost for leasing land was included in the financial data of the financial statements used to calculate the surrogate financial ratios. The Court found merit in the argument put forth by Dong Yun, *i.e.,* that the Department's decision to value a land-lease factor was contrary to law, as these expenses are included in the selling, general and administrative ("SG&A") expense ratios derived from the surrogate country financial statements, and that assigning a surrogate value would therefore result in a double-counting of this cost. *See Taian Ziyang,* 637 F. Supp. 2d at 1138-39. The Court ordered the Department to reconsider the financial statements and to reconcile its *Final Results* decision to apply a surrogate value for leased land with the financial statements used to calculate the surrogate financial ratios. *See Taian Ziyang,* 637 F. Supp. 2d at 1141.

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Upon reconsideration, the Department determines that the payment by the PRC garlic respondents for the leasing of land appears comparable to some broad line items that appear in the surrogate financial statements. Therefore, the Department agrees that it is correct to consider land rent/lease expenses as already accounted for in the SG&A costs of the surrogate financial companies. The Court found that prior decisions by the Department have assumed that, where a surrogate's financial statements contain a broad line item encompassing a FOP, that FOP is accounted for, and valuing the FOP separately would result in double-counting the cost. *See Taian Ziyang,* 637 F. Supp. 2d at 1140. Upon further consideration, the Department determines that there is evidence on the record in the form of certain broad line items, such as "rent," "leasehold land," and "lease rent," that indicates that the surrogate companies may have leased land. For example, in the financial statements of Parry Agro Industries Ltd. ("Parry Agro"), the broad line item "rent" appears.[29] In the Dhunseri Tea Company's ("Dhunseri Tea") and Moran Tea Company Ltd.'s ("Moran Tea") financial statements, the costs for "Rent," "leasehold land" and "Land (leasehold) and Development" also appear.[30] Therefore the Department will not use a separate calculated surrogate value for leased land in its redetermination of this review.

VI. Packing Cartons

In the *Final Results,* the Department valued the cardboard cartons that the respondents used for packing and transport using Indian import statistics for Indian HTS subheading

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[29] *See* Letter from Grunfeld, Desiderio, Lebowitz, Silverman and Klestadt, LLP, regarding: Rebuttal to Petitioner's Surrogate Value Submission: Administrative Review of Fresh Garlic from the People's Republic of China (A-570-831), at exhibit 6, p. 29, 34.

[30] *See* Letter from White and Case, LLP, dated November 12, 2004 at Attachment, p. 19, 29; *see also* Letter from Grunfeld, Desiderio, Lebowitz, Silverman and Klestadt, LLP, regarding: Second Surrogate Value Submission of GDLSK respondents: Administrative Review of Fresh Garlic from the People's Republic of China (A-570-831), at exhibit 6, p. 29, 33.

4819.1001, obtained through the WTA. During the course of the review, the GDLSK

respondents submitted "trade intelligence data" from Eximkey.com, indicating that Indian HTS

4819.1001 included certain specialty packing products they claim not to have used. Additionally,

the GDLSK respondents claim that Indian HTS subheading 4819.1001 includes products that,

unlike those that the GDLSK respondents used, were shipped by air. *See Issues and Decision*

Memorandum at 38. The Court instructed the Department to re-evaluate the data used in

constructing the surrogate value for packing cartons. *See Taian Ziyang,* 637 F. Supp. 2d at 1151-

52. 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 Taian Ziyang,* 637 F. Supp. 2d at 1152.

The only other data sources on the record for this review are four Indian price quotes for

cartons submitted by the GDLSK respondents. No information detailing the requestor of the

price quotes and no information on the companies providing the price quotes was ever submitted

to the record. We continue to find the four price quotes that the GDLSK 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. The price quotes that GDLSK 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 GDLSK respondents in the normal course of business. Further, on the record of this review there is no information as to the relationship between the GDLSK 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.[31] The price quotes submitted by the GDLSK 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 Taian Ziyang,* 637 F. Supp. 2d at 1151), the Court may find equally persuasive this Court's

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[31] *See* Letter from Grunfeld, Desiderio, Lebowitz, Silverman and Klestadt, LLP, regarding: Surrogate Value
Submission of GDLSK respondents: Administrative Review of Fresh Garlic from the People's Republic of China
(A-570-831), dated September 7, 2004, at exhibit 16, p. 2.

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 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

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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.

While the Department acknowledges that the data obtained through Indian import statistics may not perfectly represent the inputs used by the GDLSK respondents because the Indian import data include specialty boxes, and boxes transported by air, the Department considers the problems inherent with price quotes, and the specific deficiencies of the price quotes submitted for this review, as discussed above, 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 presented in both *Jinan Yipin I* and *Synthetic Indigo*, and the factual considerations of the current review, we continue to find the import statistics under Indian HTS 4819.1001 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.

VII. Plastic Jars

In the *Final Results*, the Department valued GDLSK respondents' plastic jars and lids using Indian import statistics for Indian HTS subheadings 3923.3000 and 3923.5000, obtained through the WTA. GDLSK respondents argued that Indian import statistics included a broad range of products that are substantially different from the plastic jars used to pack garlic and included products that, unlike those GDLSK respondents used, were shipped by air. *See Issues*

and Decision Memorandum at 38. The Court instructed the Department to re-evaluate the data

used in constructing the surrogate value for plastic jars and lids. *See Taian Ziyang*, 637 F. Supp.

2d at 1157. Specifically, the Court stated that the Department did not explain and justify 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 id.*

 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 the GDLSK respondents. At the time of the review we found that 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 the GDLSK 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 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 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 the GDLSK respondents. On the record of this

review there is no information as to the relationship between the GDLSK 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. The submitted price quotes were all dated almost a year 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 obtained. 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*, 637 F. Supp. 2d at 1196. 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 Taian Ziyang,* 637 F. Supp. 2d at 1151), 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 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.

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

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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 3923.3000 and 3923.5000 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.

VIII. Ocean Freight

For the *Final Results*, the Department calculated surrogate values for respondents' ocean freight costs using price quotes for the shipment of refrigerated containers published by Maersk Sealand ("Maersk"). *See Final Results* at 50. The Court remanded the use of the Maersk rates to the Department for further consideration on the grounds that they reflected rates for shipping routes that no respondent used, (*i.e.*, a Qingdao-to-Hong Kong-to-U.S. shipping route), 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 Taian Ziyang*, 637 F. Supp. 2d at 1162.

On remand, we reconsidered all the information on the record, *i.e.,* Maersk, the Descartes Carrier Rate Retrieval Database ("Descartes") and the freight rates paid to market economy companies by two respondents in the underlying review, adjusted within a range of plus or minus

10 percent ("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. For the *Final Results*, the Department

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, thus, the Department is able to verify the Descartes values on the record.

The price data obtained from the Descartes database are based on routes that more closely

correspond to those used by respondents. For, example, the Descartes routes avoid Hong Kong

altogether, and, as such, they are free of any additional fees or charges not incurred by

respondents. 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 indicate that the provided

ocean freight rate estimates are for refrigerated garlic, making the Descartes data the most

product specific surrogate value source on the record.[32]

While the Descartes data provide a product specific, publicly available, broad market

average, upon reconsideration the Department recognizes that the Maersk data are not

sufficiently specific to the shipment of fresh garlic. Instead, Maersk provides a general cargo

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[32] *See* Letter from Grunfeld, Desiderio, Lebowitz, Silverman and Klestadt, LLP, regarding: Comments on the Department's Ocean Freight Surrogate Research: Fresh Garlic from the People's Republic of China (A-570-831), dated March 26, 2005, at exhibit 1.

rate from only a single carrier without any indication as to the type of cargo being shipped.[33]

The fact that the Descartes rates are averaged from numerous carriers leads the Department to

conclude that the Descartes data reflect a broad based market rate.

Upon reexamination of all of the record information, we now find that the Maersk data

are not sufficiently specific to the routes used by respondents. The inclusion of a Qingdao-to-

Hong Kong-to-U.S. route and the accompanying "PRC arbitrary fee," as the Court notes, detracts

from the representativeness of the Maersk data. *See Taian Ziyang*, 637 F. Supp. 2d at 1158. As

there is a publicly available source for ocean freight rates on the record that features routes more

representative of those used by respondents, we find no need to resort to the Maersk data to value

ocean freight. Thus, upon reassessment, considering the public availability, contemporaneity,

and representativeness of the Descartes data, we now find that the lack of specificity in the

Maersk data leaves the Descartes database as the best source on the record for ocean freight

surrogate values.

The Department continues to reject the use of public versions of market economy ocean

freight rates paid by certain respondents. Although the public versions of the market economy

freight rates are contemporaneous with the period of review and specific to the shipment of

garlic, 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

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[33] *See* Letter regarding: Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China (PRC), covering the period of November 1, 2002, through October 31, 2003: Opportunity for interested parties to comment on publicly available information to value ocean freight for the final results of review, dated May 23, 2005.

percent of the actual data. [34] 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(c).

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*, *e.g.*, *Notice of Final
Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In
Part: Certain Lined Paper Products From the People's Republic of China*, 71 FR 53079
(September 8, 2006), and accompanying Issues and Decision Memorandum at Comment 3. 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 can be found. As the
underlying sources of the ranged values are considered proprietary, the ranged data are not
publicly verifiable and, consequently, are inappropriate sources of surrogate values in this case.
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 the use of the
ranged data from other respondents.

In sum, the Department determines that the Descartes database constitutes the best
available information with which to value ocean freight.

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[34] *See Final Results* at 50; *see also* Letter from Grunfeld, Desiderio, Lebowitz, Silverman and Klestadt, LLP,
regarding: Administrative Case Brief: Fresh Garlic from the People's Republic of China (A-570-831), dated April
21, 2005 ("GDLSK Case Brief"), at exhibit 3.

IX. Comments on *Draft Redetermination of Taian Ziyang* from Interested parties

Comment 1: Valuation of garlic seed

The GDLSK respondents argue that the smaller diameter of native Indian garlic is due to the predominance of "short day" growing zones in India, and garlic grown in "long day" growing zones is larger due to increased exposure to sunlight. *See GDLSK Comments* at 4. The GDLSK respondents further claim that such "long day" growing zones are very similar to the regions in which Chinese garlic growers operate. The GDLSK respondents state that indigenous Chinese garlic seed is already suited for use in "long day" regions, whereas Indian farmers must purchase "specialty" garlic in order to maximize bulb size and quality in "long day" regions. The GDLSK respondents maintain that the NHRDF prices are higher than those prices Chinese garlic producers would pay for the same type of garlic seed because the NHRDF varieties were genetically developed to grow in the hilly, cooler conditions found in "long-day" regions.

The GDLSK respondents go on to claim that there is no record evidence indicating that the prices offered for NHRDF's high-yield seed are prices actually paid by domestic Indian producers. The GDLSK respondents assert that the record does not contain evidence of a sale between Indian garlic producers and the NHRDF. *See GDLSK Comments* at 5.

The GDLSK respondents further argue that, according to charts in the *Market Research Report*, the average price for "Grade A" garlic, which the *Market Research Report* lists as having a bulb diameter between 40 and 60 mm, is approximately half of the prices provided in the NHRDF newsletter. *See GDLSK Comments* at 5; *see also Market Research Report* at 22.

The GDLSK respondents additionally argue that the Indian import statistics provide more accurate surrogate values for respondents' garlic seed because the GDLSK respondents did not

purchase hybrid or genetically modified garlic similar to the varieties included in the NHRDF data. *See GDLSK Comments* at 6. The GDLSK respondents reason that the Indian import statistics reflect "export quality" garlic, sold through "international commerce" and, as such, they are sufficiently representative of the high quality garlic grown by respondents. *See GDLSK Comments* at 6. The GDLSK respondents conclude by stating that the Indian import statistics definitively represent actual market transactions and, therefore, areare a more suitable surrogate value source than the NHRDF price data. *See GDLSK Comments* at 6.

Department's Position:

Regardless of whetherthe GDLSK respondents needed "to incur the cost of specially designed garlic seed," the Department maintains, and record evidence continues to support, that the NHRDF price lists provide the best market economy price for garlic bulb with physical characteristics similar to respondents' product. In fact, in its comments on the *Draft Redetermination of Taian Ziyang,* the GDLSK respondents confirm that the so-called "long-day zone" in which the NHRDF varieties appear to be used heavily is similar to the climate and terrain in which respondents operate. *See GDLSK Comments* at 5. The GDLSK respondents go on to claim that the NHRDF varieties were developed specifically to take advantage of the long-day zone climate and terrain. *See GDLSLK Comments* at 3. Notwithstanding the GDLSK respondents' arguments that they are being burdened with a high surrogate value that represents a cost for specially developed garlic, the record evidence and the GDLSK respondents' own statements support the use of the NHRDF varieties as the best available information with which to value respondents' garlic seed inputs. In establishing a surrogate value for inputs in NME antidumping cases, the Department is bound to use the best available surrogate value on the

record. *See* section 773(c) of the Act. The record in this case demonstrates that the NHRDF

varieties used by the Department as a surrogate value are highly similar to those actually used by

respondents, as the long-day zone in India is highly similar to the climatic conditions pervasive

in China's garlic growing regions. The GDLSK respondents' argument that there is a great deal

of such garlic seed in China in fact supports the Department's decision to use the NHRDF data,

as the NHRDF price lists are the only values on the record for such specific garlic seed inputs.

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…." The Department

considers several factors when choosing the most appropriate surrogate values, including the

quality, specificity, and contemporaneity of the data. *Nation Ford* further affirms that the

Department is given broad discretion in the application of these guidelines. *See Nation Ford*

Chemical Company v. United States, 166 F. 3d 1373, 1377-8 (CIT 1999). Record evidence

demonstrates both that the high quality seed used in long-day regions is common 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. As such, we must use the best

available information on the record to value high yield garlic seed in order to calculate margins

as accurately as possible. The only seed prices on the record with such characteristics are those

contained in the NHRDF price lists.

We continue to disagree with the GDLSK respondents' argument that the NHRDF price

lists do not represent actual sales. The NHRDF price lists, in contrast to the price quotes

provided by respondents for surrogate values for cartons, were not generated specifically for a

party involved in this investigation. *See* Letter from Collier Shannon Scott, PLLC, regarding:

Petitioners' Submission of Surrogate Values for the Factors of Production, dated September 7,

2004, at Exhibit 4. Rather, the NHRDF price lists were compiled from a years' worth of price lists generated by NHRDF, as part of a normal course of business, in order to communicate prices to Indian garlic growers. As noted specifically by the NHRDF newsletters, the NHRDF prices are, in fact, listed as "sales prices." *See id*. The Department takes this to be sufficient evidence that the NHRDF price lists are intended for market transactions.

Even if the Department were to accept the domestic prices in the *Market Research Report* as reliable data, we still would not find the GDLSK respondents' argument that the domestic prices demonstrate the NHRDF prices are too high to be compelling. The domestic prices in the *Market Research Report* clearly describe grade A garlic as having a bulb diameter typically ranging between 40-60 mm. *See Market Research Report* at 22. The *Market Research Report* further notes that garlic imported from China typically have a bulb diameter of 50-65 mm. *See id*. As the *Market Research Report's* domestic prices include garlic that may be up to 10 mm in diameter smaller than the NHRDF varieties, we find it is reasonable to conclude that the domestic price list grade A garlic as less expensive than the NHRDF varieties. As the GDLSK respondents' typical product is larger than much of the grade A garlic listed in the *Market Research Report*, we do not believe the prices listed for grade A garlic accurately represent respondents' seed inputs.

The Department further disagrees with the GDLSK respondents' argument that the Indian import statistics are the best surrogate values on the record because they represent prices for "export quality" garlic. The fact that the garlic was exported into India in no way demonstrates that it is physically similar to the seed respondents used to produce the subject merchandise. In fact, the *Market Research Report* clearly states that the types of garlic sold to developed markets are much larger than garlic than domestically consumed Indian garlic. *See Market Research*

Report at 23. We find no evidence to believe that India exclusively imports large bulb Chinese garlic of the type sold to the United States.

Comment 2: Valuation of retained garlic seed

The GDLSK respondents continue to argue that the Department should notvalue Jinan Yipin's and Harmoni's garlic seed using its standard surrogate value methodology. The GDLSK respondents claim that, as they did not have to purchase seed to produce this POR's garlic crop, the standard surrogate value methodology "does not accurately reflect {Jinan Yipin and Harmoni's} production experience." *See GDLSK Comments* at 7.

The GDLSK respondents further state that the Department's argument that the Department has received no guidance on how to value Jinan Yipin's and Harmoni's garlic is baseless, as the Department has never requested clarification from Jinan Yipin and Harmoni regarding the precise methodology they are proposing. *See GDLSK Comments* at 7. The GDLSK respondents additionally provide sample calculations for their proposed methodology. The GDLSK respondents state that their methodology does not avoid the valuation of the seed used by Jinan Yipin and Harmoni during the POR, and that such a methodology would not affect the consumption amounts reported in Jinan Yipin's and Harmoni's FOP databases.

The GDLSK respondents argue that their proposed methodology is more accurate than using the NHRDF values because it reflects the companies' actual production experience of using self-grown garlic seed rather than purchasing the seed on the open market. *See id.* at 8. They conclude by arguing that, contrary to the Department's analysis in the *Draft Redetermination*, the GDLSK respondents' proposed methodology would not double-count any FOPs.

Department's Position:

In their administrative case brief, GDLSK respondents first stated that "it is improper to apply a surrogate value for purchased seed because it does not reflect the manufacturing experiences of {Jinan Yipin and Harmoni}." *See* GDLSK Administrative Brief at 3. In their brief before the Court, GDLSK respondents changed their position, arguing that, instead of not applying any surrogate value for Jinan Yipin and Harmoni's seed FOPs, the Department ought to "use the company's reported growing costs for to value {sic} the garlic seed used." *See* GDLSK case brief at 25. To this end, both companies submitted to the record of the underlying review production breakdowns from the previous year's harvest. *See* Letter from Grunfeld, Desiderio, Lebowitz, Silverman and Klestadt, LLP, regarding: Response to Petitioners' 2nd Surrogate Value Submission, dated January 18, 2005. In their comments on *Draft Redetermination of Taiwan Ziyang*, respondents appear to again alter their position. GDLSK respondents provide a calculation in which they multiply the per metric ton usage rates of several growing FOPs by the per metric ton surrogate value and sum the results. This generates a value of $156.99 per metric ton for Jinan Yipin and a value of $287.41 per metric ton for Harmoni.

In NME cases, it is the Department's practice to value self-produced inputs by valuing the inputs used to create the relevant self-produced inputs. *See 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), and accompanying Issues and Decision Memorandum at Comment 11. Here, the Department is again using its standard "inputs-to-inputs" methodology in valuing self-produced garlic seed based upon the actual inputs used to create Jinan Yipin's and Harmoni's self-produced garlic seed. The methodology proposed by the GDLSK respondents – the multiplication of the surrogate values for growing FOPs, multiplied

by the per metric ton consumption rates for growing FOPs and the summation of the results –

provides a surrogate value for the price paid for the inputs Jinan Yipin and Harmoni used in the

production of the subject merchandise. As the GDLSK respondents have repeatedly claimed,

since the record indicates that neither Jinan Yipin nor Harmoni purchased garlic seed in the

production of this POR's garlic crop, this method more accurately reflects Jinan Yipin's and

Harmoni's production methodology and, thus, results in a more accurate normal value

calculation. *See GDLSK Comments* at Attachment 1.

For these reasons, upon reconsideration, the Department has valued Jinan Yipin's garlic

seed based upon Jinan Yipin's reported inputs for growing garlic seed, (which include fertilizer,

herbicide, pesticide, plastic film, skilled, unskilled, and indirect labor, and electricity). Similarly,

the Department has valued Harmoni's garlic seed based upon Harmoni's reported inputs for

garlic seed (which include fertilizer, herbicide, pesticide, plastic film, skilled, unskilled, and

indirect labor, and electricity). *See* Letter from Grunfeld, Desiderio, Lebowitz, Silverman and

Klestadt, LLP, regarding: Section D Response of Zhengzhou Harmoni Spice Co., Ltd, dated

March 4, 2004, at D-4; *see also* Letter from Grunfeld, Desiderio, Lebowitz, Silverman and

Klestadt, LLP, regarding: Section D Response of Jinan Yipin Co., Ltd., dated March 4, 2004, at

D-4.

Comment 3: Surrogate value for wage rate

The GDLSK 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 GDLSK Respondents state that the regression-based wage rate methodology is

not calculated based on these two principles.[35]

The GDLSK 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.[36] In *Allied Pacific II*,

the GDLSK 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.[37] As in

Allied Pacific II, the GDLSK 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."[38] Because of the Court's findings in *Taian Ziyang* that

the regression-based wage rate methodology is contrary to the requirements of the antidumping

statute, the GDLSK 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 GDLSK Respondents state that the Department cannot argue that the

regression-based wage rate calculation is the "best available information" based on the

legislative history. Specifically, the GDLSK Respondents argue that the legislative history

shows that Congress intended for the "best available information" to mean information derived

from economically comparable countries that are significant producers of comparable

merchandise. Therefore, the GDLSK Respondents contend that the regression-based wage rate

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[35] *See* section 773(c)(4) of the Act.
[36] *See Allied Pacific Food (Dalian) Co., Ltd. v. United States*, 587 F. Supp. 2d 1330 (CIT 2008) *("Allied Pacific II")*.
[37] *See id.*, 587 F. Supp. 2d at 1361.
[38] *See Taian Ziyang*, 637 F. Supp. 2d at 1136; GDLSK Respondents' Comments at 10-11.

calculation does not comport with Congress's intention for how FOPs were to be calculated using the "best available information."

The GDLSK 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 GDLSK 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 GDLSK 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 GDLSK Respondents propose that the next best choice would be using a country-wide wage rate from a country that is both a significant producer and economically comparable to the PRC.

The GDLSK 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 GDLSK Respondents, the Department contradicts this in the *Draft Redetermination of Taian Ziyang* by stating that a country's GNI is not the best indication of its wage rate.[39] Even if there is validity in the Department's theory, the GDLSK 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 GDLSK Respondents argue that the antidumping statute requires surrogate values to be derived from sources that are significant

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[39] *See GDLSK Comments* at 13; *Draft Redetermination of Taian Ziyang* at 24, 36-38.

producers of comparable merchandise. Therefore, the GDLSK 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. In fact,

the GDLSK Respondents conclude that the record 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:

In its redetermination, the Department disagrees with the GDLSK Respondents that

because the Court in *Taian Ziyang*, as in *Allied Pacific II*, concluded that the regression-based

wage rate methodology outlined in the Department's regulations "is inconsistent with the

statutory mandate;[40] the Department cannot justify the use of this methodology for this remand

simply by arguing that it results in the "best available information." Unlike in *Allied Pacific II*,

where the Court ordered the Department to redetermine its surrogate value for labor in

accordance with the requirements of the antidumping statute without regard to the antidumping

duty regulation and find a new surrogate value for labor, in *Taian Ziyang*, the Court ordered the

Department to explain the necessity, with support, for using the regression-based methodology

which utilizes data beyond comparable market-economy country data. *See Allied Pacific II*, 587

F. Supp. 2d at 1362; *Taian Ziyang*, 637 F. Supp. 2d at 1136.

In its redetermination, the Department disagrees with the GDLSK Respondents that the

revised regression-based wage rate calculation used in this remand determination is inconsistent

with the antidumping statute and the remand's instructions. As stated above, section 773(c)(1) of

the Act provides that where, as in this case, the subject merchandise is exported from an NME

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[40] *See Taian Ziyang*, 637 F. Supp. 2d at 1136; *GDLSK Comments* at 10-11.

country, "the valuation of factors of production shall be based on the best available information regarding the values of such factors in a NME country or countries considered to be appropriate by the administering authority." While the Act does not define "best available information," it provides that the Department, "in valuing factors of production under paragraph (1), shall utilize, to the extent possible, the 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." *See* section 773(c)(4) of the Act. In accordance with the guidance provided, and discretion afforded pursuant to section 773(c)(4) of the Act, the Department calculates the labor wage rate using a regression-based analysis. This is in contrast to the Department's valuation of other FOPs primarily because wage rates are less a function of economic comparability, and more a function of other social and political factors.

The Department disagrees that its method for valuing labor is in contravention of the statute. The Department continues to find that the regression-based methodology constitutes the best available information for purposes of valuing labor. The Department's methodology avoids extreme variances in labor wage rates that exist across 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 specific NME country, using that country's GNI. By avoiding the variability in results depending on which economically comparable country happens to be selected as the surrogate, the Department finds that the results of the regression-based methodology are much fairer to all parties. To enhance predictability, the average wage applied in any NME proceeding will be calculated by the Department each year, based on the most recently available data, and will be available to any interested party. *See Antidumping Duties; Countervailing Duties:*

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Notice of Proposed Rulemaking and Request for Public Comments, 61 FR 7308, 7345 (February

27, 1996). Although section 773(c) of the Act provides guidelines for the valuation of the FOPs,

it also accords the Department wide discretion in the valuation of FOPs. *See Nation Ford*, 166

F.3d at 1377; *see also Magnesium Corp. of America v. United States*, 166 F.3d 1364, 1372 (Fed.

Cir. 1999).

The antidumping statute 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.[41]

Contrary to the GDLSK Respondents' arguments, the Department finds that the

regression-based methodology reflects a permissible interpretation of what the antidumping

statute allows with respect to the determination of labor wage rates, by calculating the ME wage

rate for a country at a comparable level of economic development with the same per capita GNI

as the NME. While the requirement to use the "best available information" is an unqualified

statutory mandate, the Act only directs the Department to draw factor values from economically

comparable countries and significant producers of comparable merchandise, "to the extent

possible." *See* section 773(c)(4) of the Act. The Department continues to find that the

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[41] *See Lasko*, 43 F.3d at 1446 ("*Lasko*").

regression-based methodology sufficiently takes economic comparability of MEs, utilized in the regression, into account. The regression-based analysis utilized by the Department calculates a wage rate that reflects what the ME rate would be for a country at a level of economic development comparable to the NME country. The function of the regression-based analysis is to determine the relationship between income and wages. The use of the regression and application of the subject NME country's GNI generates an expected wage rate for a ME country at a comparable level of economic development, and constitutes the use of the best available information. In addition, 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.

Additionally, the Department continues to find that relying only on data from countries that are economically comparable to each NME 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 $470 and $1,470 (*i.e*., countries that might be considered economically comparable to China), there are just three countries out of a full dataset of 61 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 the accuracy of the regression results, minimizes the effects of the potential year-to-year variability in the country

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basket, and provides predictability and fairness. *See Final Rule*, 62 FR at 27367; *see also*

Revised Methodology Notice, 71 FR at 61720.

With regard to the GDLSK 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. On the contrary, in determining surrogate

values, the Department finds that it 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). While we do not need to duplicate the exact production experience of

the PRC garlic industry, the Department finds that the regression-based methodology is

consistent with the statutory requirement that it base the surrogate value of labor on the value of

labor from a significant producer of comparable merchandise. Specifically, the Department finds

the basket of countries used in the regression-based wage rate calculations 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 finds that it 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. Thus, the Department finds that the

antidumping statute does not prevent our usage of additional data from countries that are not

significant producers in the regression-based wage rate calculation. While the GDLSK

Respondents argue that the most accurate wage rate would be one related to the production of

comparable merchandise from the 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. Therefore, the Department finds that there is no

statutory restriction on using wage data from additional economies, if the facts warrant such

analysis. Accordingly, the Department finds that the regression-based methodology

accomplishes a more stable labor value, using data from countries that are significant producers

of garlic and countries that are not significant producers of garlic, by 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.

Additionally, with respect to the GDLSK Respondents' argument that the Department

contradicts itself on the correlation between GNI and expected wage rates and, thus, shows that a

country's GNI is not the best indication of its wage rate, the Department disagrees. The

Department finds that when the GDLSK Respondents are examining the claim of a strong

correlation between GNI and expected wage rates, the GDLSK Respondents are incorrectly

examining this claim on an individual country basis. While the Department did state that there

are wide variances in wage rates on a country-by-country basis because of differing labor factors,

this does not mean that there is not a correlation between GNI and expected wage rates in our

regression analysis. Correlation is a term that shows the statistical relationship of a broad class

between two or more observed data values. When the Department was discussing the wide

variances in wage rates between comparable economies, the Department notes that we were

discussing this on an individual dataset basis, which shows that there are certain anomalies in the

data.

As noted above, there is a gross variability between wage rates and GNI for 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, in contrast to the GDLSK Respondents' subjective claims, 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 92% r-squared relationship in the results of the overall regression analysis. *See* Annex II. Accordingly, the Department finds 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 $0.77 per hour as the surrogate value for labor.

Comment 4: Wage Rate Calculation

The GDLSK Respondents state that the Department has not provided any justification in the Draft Remand for disregarding the data from 22 countries in the regression-based wage rate calculation. The GDLSK Respondents state that the inclusion of the data from these 22 countries would reduce the resulting wage rate and appear to further the Department's stated goals in using its regression-based wage rate calculation.

Department's Position:

In the *Final Results* subject to this redetermination, the Department used a regression-based wage rate calculation that excluded data from 22 countries. *See Final Results*, at Comment 12. Additionally, in *Redetermination I*, when the Department issued the voluntary remand redetermination regarding the regression-based wage rate calculation, the Department recalculated the regression-based wage rate calculation consistent with its methodology using data that were available in December 2004. *See Redetermination I* at 2. However, in *Redetermination I*, the Department also explained that it was only using data from the 56 countries that were used in the *Final Results*, because a discussion of which countries to include in the regression analysis would result in a change in the Department's methodology, which we determined at that time was an inappropriate change to make in the context of a single investigation. *See id.*, at 15-16.

Since *Redetermination I*, after a period of public comment by parties, the Department issued its revised regression-based wage rate methodology in the *Revised Methodology Notice*. In the *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.

Based on changes to the Department's regression-based wage rate methodology and because the Court in the instant proceeding directed the Department to explain why it had excluded 22 countries from the regression-based wage rate calculation used in the *Final Results* and *Redetermination I*, the Department recalculated the regression-based wage rate using the current methodology explained in the *Revised Methodology Notice*. *See Taian Ziyang* at 73;

Revised Wage Rate Memo at 2. In examining the data available and in examining the wage rate

methodology in accordance with the Court's instructions, the Department agrees that re-

examination of its labor rate calculation to include all countries for which suitable data

(discussed below) are available is appropriate. Accordingly, the Department has expanded the

basket of countries upon which the regression is based to include all countries for which data are

available, rather than limiting these data to the fifty-six countries utilized in the *Final Results* and

Redetermination I. A broader data set represents the "best available information" for purposes of

calculating the regression, as it better ensures accuracy and fairness. *See Revised Methodology*

Notice, 71 FR at 61721. The revised data set, used in this remand determination, will therefore

include all data that meet the Department's suitability requirements, which include the

availability and contemporaneity of data (*i.e*., that there are data available for each country that is

within one year of the Base Year), that the data cover both men and women, and that the data

cover all reporting industries in the country. *See id*.

As noted above in this remand determination and in the *Revised Methodology Notice*, the

Department has revised its methodology to only include in its analysis those countries reporting

wage rate data in the Base Year or one year prior to the Base Year. In the instant review, the

Base Year was 2002. Based upon the data relied upon in this remand, the Department only used

data from countries that had data available from 2002 or one year prior. Therefore, the

Department has not included in its revised wage rate analysis countries that do not have

contemporaneous data.[42]

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[42] *See* Annex 1.

As noted above in this remand determination, "earnings" under Chapter 5 of the Yearbook of Labour Statistics is defined as being inclusive of "wage," and as including both bonuses and gratuities, and, therefore, as the best available information, the Department is only considering those countries that have reported earnings data. As a result, the Department has analyzed the data downloaded on or around December 2004, and determined that data for Cambodia; Hong Kong; Indonesia; Italy; Myanmar; Netherlands; Saint Vincent and the Grenadines; Thailand; and Peru; do not accurately reflect the remuneration received by workers and, therefore, has not included these data.[43]

As noted above in this remand determination, the Department is only considering those countries where there was exchange rate data and consumer price index data to adjust the hourly wages to be denominated into U.S. dollars and inflate the wages to be contemporaneous for the Base Year. After analyzing the data, the Department finds that a consumer price index was not available for the following seven economies: Cuba; Gibraltar; Puerto Rico; Saint Helena; San Marino; Serbia and Montenegro; and Taiwan; and, the Department finds there was no exchange rate available for Macau. Thus, the Department has not included these countries' data in the revised wage rate analysis.[44]

Finally, as noted above in this remand determination, the Department is only considering those countries where there are GNI data available. After analyzing the data downloaded in or around December 2004, the Department finds that there were no GNI data for the following five economies: Cyprus; Isle of Man; Qatar; West Bank and Gaza Strip; and Zimbabwe. Of the remaining entities available, the Department also notes the following are currently or were

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[43] See Annex III.
[44] *See* Annex 1 and III.

NMEs designated by the Department in 2001 or 2002: Armenia; Azerbaijan; China; Estonia; Georgia; Kyrgyzstan; Lithuania; Moldova; Romania; and Ukraine.[45] Accordingly, the Department did not include in its revised wage analysis the data for countries where there were no GNI data available and the data for countries that were designated as NMEs. Therefore, the Department has only included in its revised wage analysis the data for the 61[46] countries that meet all of the Department's suitability requirements.

The Department believes that the revised wage rate methodology arrived at after a period of public notice and comment, fully addresses the Court's concern with regard to inclusion of all data that meet the Department's selection criteria. Therefore, the Department has revised the 2002 expected wage rate for the PRC using this revised version of the methodology for the purposes of this remand, relying on all suitable data that were available in the Base Year or one year prior. The revised wage rate for the PRC used in this remand determination is $0.77.

Comment 5: Surrogate value for packing cartons

The GDLSK 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 GDLSK respondents contend that while the Court held that the Department "failed to explain how the Indian import data is the 'best available information,' particularly in the light of the domestic price quotes which represent 'values {that} are much more specific to the cartons

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[45] *See id.*

[46] These countries are: Albania; Argentina; Australia; Austria; Bahrain; Botswana; Brazil; Bulgaria; Canada; Chile; Colombia; Costa Rica; Croatia; Czech Republic; Denmark; Ecuador; Egypt; El Salvador; Finland; France; Germany; Guatemala; Hungary; Iceland; India; Iran Islamic Rep. of; Ireland; Israel; Japan; Jordan; Kazakhstan; Korea; Republic of Latvia; Luxembourg; Macedonia; The former Yugoslav Rep. of; Malaysia; Malta; Mauritius; Mexico; Mongolia; New Zealand; Nicaragua; Norway; Pakistan; Panama; Paraguay; Poland; Seychelles; Singapore; Slovakia; Slovenia; South Africa; Spain; Sri Lanka; Sweden; Switzerland; Trinidad and Tobago; Turkey; United Kingdom; United States; Uruguay.

used for garlic packing," 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. Furthermore, the GDLSK respondents 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. Consequently, the GDLSK respondents argue, 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:

The GDLSK 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 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. 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 GDLSK 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.

In its redetermination, the Department acknowledges the fact that the data obtained through the WTA do not perfectly represent the inputs of the GDLSK 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 during the POR. The fact that the GDLSK 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 an actual arm's length price 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.

Given that the Department has a practice of selecting data representing broad market averages as surrogate values and the CIT 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 GDLSK respondents' cartons in this proceeding.

Comment 6: Surrogate value for jars and lids

As with cartons, the GDLSK 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 GDLSK respondents contend that while the Court held that the Department "failed to adequately explain how the admittedly non-representative Indian import statistics constituted the 'best available information,' particularly in light of the availability of product-specific, domestic Indian price quotes for plastic jars and lids comparable to those actually used in this case," 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. Consequently, the GDLSK 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.

In its redetermination, the Department acknowledges the fact that the data obtained through the WTA do not perfectly represent the inputs of the GDLSK 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 GDLSK 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 GDLSK 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 an actual arm's length price 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.

Given that the Department has a practice of selecting data representing broad market averages as surrogate values and the CIT 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

GDLSK respondents' plastic jars and lids in this proceeding.

Comment 7: Surrogate value for ocean freight

GDLSK respondents argue that the Department's rejection of the ranged ocean freight

values on the record is in violation of the Department's obligation to use the best available

information on the record to value respondents' inputs, as the ranged ocean freight is specific to

the subject merchandise. *See GDLSK Comments* at 21.

Department's Position:

In selecting surrogate values, "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 Surrogate Selection Policy

Bulletin http://ia.ita.doc.gov/policy/index.html, at page 4 of the website version. There is no

hierarchy in the selection of a surrogate value. However, as has been stated previously in the

underlying review, the Department's regulations instruct the Department to normally use

publicly available information when possible. *See* 19 CFR 351.408(c)(1); *see also* section

773(c)(1) of the Act. While we recognize that the ranged ocean freight values are specific to the

subject merchandise and contemporaneous with the period of review, the values have been

ranged to protect the underlying proprietary source information. Because they have been ranged,

and because the Descartes data already provides a surrogate value source that is

contemporaneous with the POR, specific to the subject merchandise, and publicly available, we find no need to resort to non-publicly available information to value ocean freight.

CONCLUSION

Pursuant to the Court's opinion, we have reconsidered the antidumping duty margin of Taian Fook Huat Tong Kee Foodstuffs Co., Ltd., and we have reconsidered and recalculated the weighted-average antidumping duty margins of Zhengzhou Harmoni Spice Co., Ltd., Jinan Yipin Corporation, Ltd., Linshu Dading Private Agricultural Products Co., Ltd., Sunny Import and Export Co., Ltd., and Jinxiang Dong Yun Freezing Storage Co., Ltd. Based on these changes, the following are the recalculated margins pursuant to redetermination on remand:

Zhengzhou Harmoni Spice Co., Ltd.: 0.00 percent

Jinan Yipin Corporation, Ltd.: 1.04 percent

Linshu Dading Private Agricultural Products Co., Ltd.: 4.34 percent

Sunny Import and Export Co., Ltd.: 4.22 percent

Jinxiang Dong Yun Freezing Storage Co., Ltd.: 15.49 percent

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Ronald K. Lorentzen
Deputy Assistant Secretary
  for Import Administration

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Date

Annex 1

Calculation of China's Expected Wages Rate based on 2002 GNI

Following the criteria and methodology described in the both the Revised Methodology Notice and the Draft Results, using the data available as of December 2004, the Department has calculated China's expected NME wages.

2001 and 2002 data in Chapter 5B of the ILO International Labour Statistics were available for 94 economies: Albania, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahrain, Botswana, Brazil, Bulgaria, Cambodia, Canada, Chile, China, Colombia, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, El Salvador, Estonia, Finland, France, Georgia, Germany, Gibraltar, Guatemala, Hong Kong, Hungary, Iceland, India, Indonesia, Iran, Ireland, Isle of Man, Israel, Italy, Japan, Jordan, Kazakhstan, Korea, Kyrgyzstan, Latvia, Lithuania, Luxembourg, Macau, China, Macedonia, Malaysia, Malta, Mauritius, Mexico, Moldova, Mongolia, Myanmar, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, Poland, Puerto Rico, Qatar, Romania, Saint Helena, Saint Lucia, Saint Vincent and the Grenadines, San Marino, Serbia and Montenegro, Seychelles, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Taiwan, Thailand, Trinidad and Tobago, Turkey, Ukraine, United Kingdom, United States, Uruguay, West bank and Gaza strip, and Zimbabwe.

Within this data set, for 2001 and 2002, there were no "earnings" data for the following 9 economies: Cambodia, Hong Kong, China, Indonesia, Italy, Myanmar, Netherlands, Saint Vincent and the Grenadines, Thailand, and Peru. Similarly, there were no "men and women" data for Saint Lucia. 2001 and 2002 data representing all industries ("Total") were available for the remaining 84 entities. There were two entries for Poland and the United Kingdom which met all of the Department's criteria for choosing a single wage rate. These entries were averaged to arrive at a single wage rate for each economy.

Of these 84 entities, a consumer price index was unavailable for the following 7 economies: Cuba, Gibraltar, Puerto Rico, Saint Helena, San Marino, Serbia and Montenegro, and Taiwan. Of the remaining economies, there was no exchange rate available for Macau. Additionally, there was no GNI data for Cyprus, Isle of Man, Qatar, West Bank and Gaza Strip, Zimbabwe.

Of the remaining 71 entities, the following are currently or were NMEs designated by the Department in 2001 or 2002: Armenia, Azerbaijan, China, Estonia, Georgia, Kyrgyzstan, Lithuania, Moldova, Romania, Ukraine. Accordingly, the Department ran its expected NME wage regression on the following 61 countries: Albania, Argentina, Australia, Austria, Bahrain, Botswana, Brazil, Bulgaria, Canada, Chile, Colombia, Costa Rica, Croatia, Czech Republic, Denmark, Ecuador, Egypt, El Salvador, Finland, France, Germany, Guatemala, Hungary, Iceland, India, Iran, Islamic Rep. of, Ireland, Israel, Japan, Jordan, Kazakhstan, Korea, Republic of, Latvia, Luxembourg, Macedonia, The former Yugoslav Rep. of, Malaysia, Malta, Mauritius, Mexico, Mongolia, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Poland,

Seychelles, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Trinidad and Tobago, Turkey, United Kingdom, United States, Uruguay.
As noted in the ILO database, the wage rates for Korea, Mongolia and Turkey are denominated in units of 1,000 of their respective national currency, and have been converted accordingly.

Following the data compilation and regression methodology described in the *Revised Methodology Notice* and Annex II herein, and using GNI and wage data for Base Year 2002, the regression results are: Wage = GNI*.000478+.314174.

Country	2002 GNI (USD per Annum)	Expected NME Wage Rate (USD per Hour)
China	960	0.77