

MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Amended Final
Determination in the Administrative Review on Fresh Garlic from
the People's Republic of China

SUMMARY

We have analyzed the ministerial-error allegations from interested parties in the antidumping duty administrative review of fresh garlic from the People's Republic of China ("PRC"), covering the period of review November 1, 2002, through October 31, 2003 ("POR"). As a result of our analysis, we have corrected certain inadvertent programming and clerical errors in the margin calculations for several respondents. We recommend that you approve the positions that we have developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues for which we received comments by parties, as well as additional ministerial errors that we discovered in the course of our analysis of the issues raised by the interested parties:

Clerical Error Allegations

- I. Surrogate Values**
 - Issue 1: PRC Wage Rate**

- II. Company-Specific Issues**
 - A. Jinan Yipin Co., Ltd. ("Jinan Yipin")**
 - Issue 2: Quantity Variable**

 - B. Linshu Dading Private Agricultural Co., Ltd. ("Linshu Dading")**
 - Issue 3: Plastic Bag Weight**

 - C. Taian Fook Huat Tong Kee Foodstuffs Co., Ltd. ("FHTK") and Taiyan Ziyang Food Co., Ltd. ("Ziyang")**
 - Issue 4: Herbicide Unit of Measure**

- Issue 5: Plastic Film Usage Rate**
- Issue 6: Inadvertent Omission of Reported Consumption of Water for the Peeling Stage of Production from the Normal Value Calculation**

- D. FHTK**
 - Issue 7: Yield Loss**
 - Issue 8: Incorrect Processing Labor Consumption**

- E. Ziyang**
 - Issue 9: Water Usage Rate**
 - Issue 10: Inadvertent Omission of Reported Consumption of Labor for the Peeling Stage of Production from the Normal Value Calculation**
 - Issue 11: Inadvertent Omission of Skilled Labor from the Normal Value Calculation**

- F. Zhengzhou Harmoni Spice Co., Ltd. (“Harmoni”)**
 - Issue 12: Yield Loss Application to Packing Labor**

BACKGROUND

The Department published its final results of review on June 13, 2005. See Final Results of Antidumping Duty Administrative Review: Fresh Garlic from the People’s Republic of China, 69 FR 34082, and accompanying “Issues and Decision Memorandum” dated June 6, 2005 (“Final Results”). We released the disclosure documents to the respondents on June 14, 2005, and to the petitioners¹ on June 16, 2005. On June 20, 2005, the following parties filed timely allegations that the Department made various ministerial errors in the Final Results: Jinan Yipin, Linshu Dading, Sunny Import and Export Co., Ltd. (“Sunny”), FHTK, Ziyang, and Harmoni. On June 23, 2005, the petitioners submitted rebuttal comments to one of the ministerial error allegations filed by Jinan Yipin, Linshu Dading, Sunny, and Harmoni. In addition, when examining the ministerial error allegations raised by FHTK and Ziyang, the Department found other ministerial errors. Ziyang and FHTK filed complaints with the Court of International Trade (“CIT”), challenging the final results of review on June 14, 2005, and June 15, 2005, respectively. On July 26, 2005, Harmoni, Jinan Yipin, Linshu Dading, and Sunny filed similar complaints with the CIT, challenging the final results of review. On August 9, 2005, and August 10, 2005, Jinxiang Dongyun Freezing Storage Co. Ltd. (“Dongyun”) and the petitioners, respectively, also filed complaints with the CIT, challenging the final results of review. When the interested parties noted above filed their complaints with the CIT the Department no longer had jurisdiction to correct the ministerial errors. Therefore, the Department requested leave from the CIT to

¹The Fresh Garlic Producers Association and its individual members (Christopher Ranch L.L.C., The Garlic Company, Valley Garlic, and Vessey and Company, Inc).

correct these errors. On September 15, 2005, the CIT granted the Department leave to correct the errors.

The Department has prepared a detailed analysis memorandum for each respondent for which it recalculated a margin based on the correction of the ministerial errors. All such memoranda are dated September 22, 2005, and can be found on the record of this review located in the Central Records Unit, room B-099 of the main Department building.

CHANGES SINCE THE FINAL RESULTS

- We adjusted the margin calculation to use the appropriate unit of measurement for the quantity sold by Jinan Yipin. See Issue 2.
- We adjusted the normal value calculation to use the correct plastic bag weight for control number (“CONNUM”) 0005 reported by Linshu Dading. See Issue 3.
- We adjusted normal value to apply a kilogram-per-kilogram usage rate for herbicide for FHTK and Ziyang (rather than a metric ton-per-kilogram usage rate). See Issue 4.
- We applied the highest usage rate for plastic film to FHTK and Ziyang. See Issue 5.
- We adjusted normal value to include the inadvertently omitted usage rate for water used for processing peeled garlic for FHTK and Ziyang. See Issue 6.
- We adjusted normal value to include the most up-to-date labor information provided by FHTK for the peeling stage of garlic production. See Issue 8.
- We applied the highest usage rate for water for Ziyang. See Issue 9.
- We adjusted normal value to include the inadvertently omitted portion of labor for the peeling stage of production for Ziyang. See Issue 10.
- We adjusted normal value to include the inadvertently omitted usage rate for the skilled labor portion of production for Ziyang. See Issue 11.
- We adjusted normal value so as not to double-count the yield loss ratio with regard to labor used for processing peeled garlic from Harmoni. See Issue 12.

DISCUSSION OF THE ISSUES

I. Surrogate Values

For the Final Results, the Department used the surrogate values discussed in its factors valuation memo from the Preliminary Results.² See Memorandum from Edward Yang to Barbara E. Tillman re: Factors Valuations from the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China, dated November 29, 2004 ("Preliminary FOP Memo"). Changes to the surrogate values discussed in the Preliminary FOP Memo were outlined in the factors valuation memo for the Final Results. See Memorandum from Salim Bhabhrawala and Sochieta Moth to the file re: Factors Valuations for the Final Results of the Administrative Review, dated June 6, 2005.

Issue 1: PRC Wage Rate

The Department received allegations of ministerial errors in the calculation of the PRC wage rate from Harmoni, Jinan Yipin, Linshu Dading, and Sunny (collectively, the "GDLSK respondents")³ and rebuttal comments from the petitioners.

The GDLSK respondents argue that the Department's decision to use \$0.93/hour as the surrogate value for PRC labor costs is erroneous, and has been appealed to the CIT in other proceedings.⁴ The GDLSK respondents further state that because the Department took a voluntary remand regarding the calculation of the wage rate in another proceeding, the Department is in error in continuing to rely on Shrimp and Furniture to value the labor rate as it did in the Final Results. See GDLSK Ministerial Error at 3. Thus, the GDLSK respondents request that the Department revise its final margin calculations to incorporate a different surrogate value labor rate.

The petitioners state that the voluntary remand cited by the GDLSK respondents is not due to be filed with the CIT until August 1, 2005, and therefore the Department has not yet concluded that the surrogate value for labor was in fact erroneous. The petitioners further state that the choice of the surrogate value used for labor for the Final Results cannot be classified as a ministerial error

²See Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Administrative Review, 69 FR 70638 (December 7, 2004) ("Preliminary Results").

³See Ministerial Error Allegations: Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China (June 20, 2005) ("GDLSK Ministerial Error").

⁴See Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China, 69 FR 70997 (December 8, 2004) ("Shrimp") and Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture From the People's Republic of China, 69 FR 67313 (November 17, 2004) ("Furniture").

because it was a deliberate, methodological decision that the Department made in accordance with practice in the recent Shrimp and Furniture final determinations. Thus, the petitioners claim that there is no reason for the Department to change the surrogate value used for labor in its Final Results.

Department's Position

We agree with the petitioners that the labor rate allegation raised by the GDLSK respondents is not of a ministerial nature. A ministerial error is defined in Section 751(h) of the Tariff Act of 1930 ("the Act") and 19 CFR 351.224(f) as "an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial."

The GDLSK respondents have not argued that the Department has made an inadvertent or clerical error in the calculation of the wage rate used for the Final Results. Thus, the GDLSK respondents' allegation is a substantive argument and does not address an error in addition, subtraction, or other similar type of unintentional error. Therefore, the Department has not made any adjustments to the surrogate value for labor.

Company Specific Comments

A. Jinan Yipin

Issue 2: Quantity Variable

Jinan Yipin argues that the Department made a ministerial error by incorrectly using the quantity variable ("QTYU") to calculate the margin as the variable QTYU reflects the total quantity reported on the invoice, before adjustments for returns are made. Jinan Yipin states that the net quantity variable ("NETQTYU") should have been used instead because it represents the actual quantity of subject merchandise sold in the United States, net of returns, during the period of review.

The petitioners did not comment on this issue.

Department Position

The Department agrees with Jinan Yipin, and will make the necessary adjustments to its margin calculation. For further details, see Memorandum from Sochieta Moth to Wendy J. Frankel re: Analysis for the Amended Final Results of the Administrative Review of Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Jinan Yipin Co., Ltd., dated September 22, 2005.

B. Linshu Dading

Issue 3: Plastic Bag Weight

Linshu Dading alleges that the Department made a ministerial error by using an incorrect plastic bag weight for CONNUM 0005. Linshu Dading argues that the correct weight for the plastic bags used to pack this particular CONNUM was included in its March 4, 2004, section D response at Exhibit D7.

The petitioners did not comment on this issue.

Department Position

The Department agrees with Linshu Dading, and has made the necessary adjustments to its margin calculation. For further details, see Memorandum from Jennifer Moats to Wendy J. Frankel re: Analysis for the Amended Final Results of the Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Linshu Dading Private Agricultural Products Co., Ltd., dated September 22, 2005.

C. FHTK and Ziyang

Issue 4: Herbicide Unit of Measure

FHTK and Ziyang allege that the Department made a ministerial error in its application of partial adverse facts available⁵ in the calculation of normal value. Specifically, FHTK and Ziyang argue that the usage rate that the Department applied for herbicide consumption was reported by the original respondent on a metric ton-per-kilogram basis. FHTK and Ziyang argue that this usage rate should have been converted to a kilogram-per-kilogram basis, in order to comply with the units of measurement for the other usage rates used to calculate normal value.

The petitioner did not comment on this issue.

⁵ See Memorandum from Steve Williams and Ryan Douglas to Barbara E. Tillman re: Application of Partial Adverse Facts Available for Taiyan Ziyang Food Company Ltd. in the Final Results of the Administrative Review for the Period 11/1/02 - 10/31/03, dated June 6, 2005, and Memorandum from Steve Williams and Ryan Douglas to Barbara E. Tillman re: Application of Partial Adverse Facts Available for Taian Fook Huat Tong Kee Foodstuffs Co., Ltd. in the Final Results of the Administrative Review for the Period 11/1/02 - 10/31/03, dated June 6, 2005.

Department Position

The Department agrees with FHTK and Ziyang, and will make the necessary adjustments to its margin calculations. For further details, see Memorandum from Steve Williams to Wendy J. Frankel re: Analysis for the Final Results of the Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China: Fook Huat Tong Kee Pte., Ltd., dated September 22, 2005 (“Amended Final Analysis for FHTK Memorandum”); see also Memorandum from Jennifer Moats to Wendy J. Frankel re: Analysis for the Amended Final Results of the Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China: Taiyan Ziyang Food Company, Ltd., dated September 22, 2005 (“Amended Final Analysis for Ziyang Memorandum”).

Issue 5: Plastic Film Usage Rate

When examining the ministerial error allegation regarding herbicide raised by FHTK and Ziyang, the Department found an additional ministerial error with regard to the usage rate for plastic film that was used to calculate normal value in the Final Results. Specifically, in our application of partial adverse facts available for FHTK and Ziyang, we intended to use the highest of the reported usage rates for all of the factors of production associated with planting, growing, and harvesting garlic from the other seven respondents in this review. See footnote 5. In reviewing these reported factors, however, we discovered that we erroneously did not apply the highest of the reported usage rate for plastic film to FHTK and Ziyang.

Department Position

For these amended final results, we have applied the highest reported usage rate for plastic film to FHTK and Ziyang. See Amended Final Analysis for FHTK and Amended Final Analysis for Ziyang.

Issue 6: Inadvertent Omission of Reported Consumption of Water for the Peeling Stage of Production from the Normal Value Calculation FHTK and Ziyang

When examining the ministerial error allegation raised by FHTK and Ziyang, the Department found additional ministerial errors with regard to the calculation of water as it relates to the calculation of normal value in the Final Results. Specifically, in the Final Results, although the Department intended to use FHTK’s and Ziyang’s reported consumption of water for processing peeled garlic, we erroneously did not include this additional water usage in the normal value calculation of peeled garlic for either of these respondents.

Department Position

For the Final Results, the Department intended to apply the highest usage rates reported by any one of the seven respondents for each factor of production related to planting, growing, and

harvesting, but to use FHTK's reported factor consumption rates for the peeling stage of production. However, in the Final Results, the Department did not properly incorporate FHTK's reported consumption of water for the peeling stage. FHTK did not report water consumption by processing stage. Rather, it reported a total water consumption rate for fresh garlic and a total water consumption rate for peeled garlic. To calculate FHTK's water consumption rate for the peeling process for these Amended Final Results, the Department calculated the difference between FHTK's reported water consumption for fresh garlic and for peeled garlic. We then added this amount to the normal value calculation for FHTK.

For the Final Results, the Department intended to apply the highest usage rates reported by any one of the seven respondents for each factor of production related to planting, growing, and harvesting, but to use Ziyang's reported factor consumption rates for the peeling stage of production. However, in the Final Results, the Department did not properly incorporate Ziyang's reported consumption of water for the peeling stage. Ziyang did not report water consumption by processing stage. Rather, it reported a total water consumption rate for fresh garlic and a total water consumption rate for peeled garlic. To calculate Ziyang's water consumption rate for the peeling process for these Amended Final Results, the Department calculated the difference between Ziyang's reported water consumption for fresh garlic and for peeled garlic. We then added this amount to the normal value calculation for Ziyang.

D. FHTK

Issue 7: Yield Loss

FHTK claims that the Department made a ministerial error by overstating FHTK's yield loss ratio. Specifically, FHTK argues that the amount it reported as fresh garlic "Quantity Disposed Other than for Sale" for the "Trimmed Dry Bulb After Cold Storage Reconciliation" (emphasis added) stage of production was used for the production of non-subject garlic products, and should thus not be included in FHTK's yield loss calculation. FHTK argues that the Department inadvertently treated this amount of garlic as wastage within FHTK's yield loss calculation. Finally, FHTK argues that it described how this garlic was used for the production of non-subject garlic products in its first supplemental questionnaire response at Exhibit 16, dated September 7, 2004.

The petitioners did not comment on this issue.

Department Position

The Department disagrees with FHTK. FHTK submitted information regarding yield loss for various stages of garlic production for this administrative review. In its September 7, 2004, supplemental response at Exhibit 16, FHTK reported various figures with regard to a number of garlic production stages. Specifically, in its ministerial-error allegation FHTK cites to the "Quantity of Garlic Disposed Other than for Sale" for the "Trimmed Dry Bulb After Cold Storage

Reconciliation” stage of production, which was used in the production of non-subject garlic products.

However, in its November 17, 2004, supplemental response, FHTK stated that the “Quantity of Garlic Disposed Other than for Sale” for the “Trimmed Dry Bulb Before Cold Storage Reconciliation” (emphasis added) stage of production “represents the total amount of garlic that FHTK withdrew from inventory” to produce non-subject garlic products. The information in the November 17, 2004, supplemental response was the most current information provided on the record by FHTK on this topic and thus the Department relied on this information for its calculation of FHTK’s yield loss ratio. Therefore, the Department does not consider this issue to be clerical in nature and is not amending its final results with respect to this issue.

Issue 8: Incorrect Processing Labor Consumption

When examining the ministerial error allegation raised by FHTK, the Department found an additional ministerial error with regard to the calculation of FHTK’s labor as it relates to the calculation of normal value in the Final Results. Specifically, in the Final Results, the Department did not properly account for the labor that FHTK used to peel garlic. The Department erroneously accounted for this additional labor usage using the processing labor figure that it had used in its Preliminary Results. However, the Department should have used FHTK’s most recent and updated FOP database (submitted with its February 26, 2005, response to a Department supplemental questionnaire) to calculate this additional labor usage rate.

Department Position

In order to correct this error, the Department has adjusted the amount of labor associated with processing peeled garlic in the normal value calculation. Specifically, the Department used the most up-to-date information regarding the amount of labor used for processing peeled garlic in the calculation of FHTK’s normal value for peeled garlic. See Amended Final Analysis for FHTK.

E. Ziyang

Issue 9: Water Usage Rate

When examining the ministerial error allegation raised by Ziyang, the Department found an additional ministerial error with regard to the usage rate for water with respect to growing garlic that was used to calculate normal value in the Final Results. Specifically, in our application of partial adverse facts available, we intended to apply the highest of the reported usage rates for all of the factors of production associated with planting, growing, and harvesting from the other seven respondents in this review. In reviewing these reported factors, however, we discovered that we erroneously did not apply the highest of the reported usage rates for water to Ziyang.

Department Position

For these amended final results, we have applied the highest reported usage rate for water for growing garlic to Ziyang's normal value calculation. See Amended Final Analysis for Ziyang.

Issue 10: Inadvertent Omission of Reported Consumption of Labor for Processing Peeled Garlic from the Normal Value Calculation

When examining the ministerial error allegation raised by Ziyang, the Department found an additional ministerial error with regards to the calculation of labor as it relates to the calculation of normal value in the Final Results. Specifically, in the Final Results, the Department did not properly account for the labor that Ziyang used to peel fresh garlic. Although the Department intended to use Ziyang's reported consumption of labor for processing peeled garlic, we erroneously did not apply any additional labor usage to the normal value calculation of peeled garlic.

Department Position

For the Final Results, the Department intended to apply the highest reported usage rates for each factor of production related to planting, growing, and harvesting, but to use Ziyang's reported factor consumption rates for the peeling stage of production. However, in the Final Results, the Department did not properly incorporate Ziyang's reported consumption of labor for peeling garlic. Ziyang did not report labor for its garlic production by processing stage. Rather, it reported a total labor consumption rate for fresh garlic and a total labor consumption rate for peeled/peeling garlic. To calculate the labor consumption rate for the peeling process for these Amended Final Results, the Department calculated the difference between Ziyang's reported labor consumption rate for fresh garlic and Ziyang's reported labor consumption rate for peeled/peeling garlic. We then added this amount to the normal value calculation for peeled garlic for Ziyang.

Issue 11: Inadvertent Omission of Skilled Labor from the Normal Value Calculation

As described above, in our application of partial adverse facts available for Ziyang, we intended to use the highest of the reported usage rates for all of the factors of production associated with planting, growing, and harvesting from the other seven respondents in this review. For the Final Results, the Department only included the highest usage rate for Ziyang's unskilled labor, and inadvertently did not incorporate a usage rate for skilled labor within Ziyang's normal value calculation.

Department Position

For these amended final results, we will apply the highest reported usage rate for skilled labor related to planting, growing, and harvesting garlic to Ziyang. See Amended Final Analysis for Ziyang.

F. Harmoni

Issue 12: Yield Loss Application to Packing Labor

Harmoni alleges that the Department made a ministerial error in its calculation of normal value. Specifically, Harmoni argues that the Department inappropriately applied the yield loss ratio to all of its reported labor inputs. Harmoni argues that this is erroneous because the packing labor inputs that it reported for peeled garlic were calculated using the net weight of the peeled, packed garlic, and thus already accounted for the amount of garlic lost to wastage. Harmoni states that all of the information needed to perform this calculation was provided in Exhibit 10 of its October 15, 2004, response. Harmoni further reiterated in Exhibit 2 of its 21-Day Submission of Zhengzhou Harmoni Spice Co., Ltd After Publication of the Preliminary Results, dated December 28, 2004, at footnote 3 that the denominator used in the calculation for peeled garlic packing labor hours was the net weight of the peeled garlic production quantity. In addition, Harmoni updated its factors of production database to separate the labor inputs to incorporate the information submitted as Exhibit 10 its October 15, 2004, response. Accordingly, Harmoni states that the Department has adequate information to apply the yield loss rate appropriately to only the labor fields that did not already incorporate this loss in its original calculation.

The petitioner did not comment on this issue.

Department's Position

The Department agrees with Harmoni that this information was on the record in its October 2004, response, and that we double-counted a portion of the yield loss by inadvertently applying the yield loss ratio to packing labor in the Final Results. Therefore, the Department will make the necessary adjustments to Harmoni's margin calculations. For further details, see Amended Final Analysis for Zhengzhou Harmoni Spice Co., Ltd., dated September 22, 2005.

RECOMMENDATION

Based on our analysis of the comments received and the additional inadvertent errors we found, we recommend adopting all of the above positions and adjusting all related margin calculations accordingly. If these recommendations are accepted, we will publish the amended final

determination of sales at less than fair value and the final amended weighted-average dumping margins for all reviewed firms in the Federal Register.

The revised margins will be as follows:

Company	Margin from <u>Final Results</u>	Amended Final Margin
FHTK	315.90%	19.68%
Harmoni	18.97%	14.20%
Linshu Dading	25.95%	10.78%
Jinan Yipin	17.01%	15.92%
Ziyang	179.06%	15.09%

AGREE _____

DISAGREE _____

Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

Date