

DATE: September 24, 2010

MEMORANDUM TO: Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

FROM: Susan Kuhbach
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Fresh Garlic from the People's Republic of China: Issues and
Decision Memorandum for the Final Results of the New Shipper
Review of Qingdao Sea-line Trading Co. Ltd.

SUMMARY

We have analyzed the case brief submitted by Qingdao Sea-line Trading Co. Ltd. (Qingdao Sea-line), and the rebuttal brief submitted by Petitioners,¹ in the new shipper review (NSR) of fresh garlic from the People's Republic of China (PRC). The Department of Commerce (Department) published the preliminary results for this review on May 5, 2010. See Fresh Garlic from the People's Republic of China: Preliminary Results of New Shipper Review, 75 FR 24578 (May 5, 2010) (Preliminary Results). The period of review (POR) is November 1, 2008 through April 30, 2009. Following the Preliminary Results and analysis of the comments received, we have made changes to these final results. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is a complete list of issues for which we received comments and rebuttal comments by parties:

General Issues:

- Issue 1: The Bona Fides of Qingdao Sea-line's Sale**
- Issue 2: Surrogate Valuation of Garlic Bulbs**
- Issue 3: Use of India Wholesale Price Index as Inflation for Surrogate Values**
- Issue 4: Financial Ratios**
- Issue 5: Wage Rates**
- Issue 6: Cold Storage**

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

Discussion of the Issues

Issue 1: The Bona Fides of Qingdao Sea-line's Sale

Qingdao Sea-line argues that the Department should continue to find its sale to be bona fide for these final results. Qingdao Sea-line notes that, in the Department's memorandum, Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China: Qingdao Sea-line International Trading Co., Ltd. (April 27, 2010) (Bona Fide Memorandum), the Department examined the totality of the circumstances surrounding the sale by Qingdao Sea-line, including the price, quantity, terms of sale, and other factors, and preliminarily found that Qingdao Sea-line's sale is bona fide.

In its brief, Qingdao Sea-line argues that Petitioners' arguments regarding information gathered from the Chemworld website,² which calls into question the accuracy of the sales data reported by Qingdao Sea-line, are without merit and should be rejected by the Department. Specifically, Qingdao Sea-line argues that the information Petitioners submitted to the Department, inter alia, PRC customs data the Petitioners purchased from a private information provider, Chemworld, is misleading, erroneous, and lacking any substantial corroboration. Qingdao Sea-line contends that it has been diligent in its efforts to provide comprehensive and accurate information and documentation required by the Department during this review, and, therefore, there is no basis to doubt the information reported in its submissions.

Qingdao Sea-line notes that in Petitioners' March 26, 2010 submission, Petitioners presented data that appeared to contradict certain values reported to the Department by Qingdao Sea-line. This information was purported to be PRC customs data for several Qingdao Sea-line export sales of garlic and other merchandise to the United States. Qingdao Sea-line argues that it has already pointed out in its rebuttal to Petitioners' March 26, 2010 comments, that "the Petitioners' proclaimed 'Chinese Customs data' is not official Chinese Customs information. Petitioners provided no official corroborated documentation to validate the accuracy of the information that Petitioners purchased from a private information provider, which specializes in providing chemical-related information." See Qingdao Sea-line's April 13, 2010 Rebuttal to Petitioners' Comments at 1. Further, Qingdao Sea-line explains that it attempted to verify the information provided by Petitioners by contacting the customs data vendor, Chemworld, via both telephone and e-mail. Qingdao Sea-line states that, when asked about the export data sold to Petitioners, Chemworld replied that "the export data we provided is just for reference only, it can never be used for any commercial use. We cannot ensure that the data is fully correct." See Qingdao Sea-line's April 22, 2010 Response to Sections A and C, 3rd Supplemental Questionnaire at Exhibit 2. In conclusion, Qingdao Sea-line contends the Department should not consider the Chemworld information because it is unsubstantiated, erroneous, and misleading.

Petitioners counter by arguing that while the Department may decide that the totality of circumstances in this proceeding does not support rejecting Qingdao Sea-line's reporting of its sale terms, the Department should nevertheless acknowledge that, contrary to Qingdao Sea-line's

² See Petitioners' March 26, 2010 submission regarding Qingdao Sea-line's 2nd supplemental questionnaire response. This information was not considered in the Preliminary Results. However, the Department indicated that it would consider it for these final results.

arguments, such alternative data can be considered at the Department's discretion in evaluating bona fides in future reviews. Petitioners contend that Qingdao Sea-line should be held accountable for significant discrepancies between their reported information and data recorded elsewhere, such as PRC customs statistics.

Department's Position:

The Department continues to find Qingdao Sea-line's sale to be bona fide. As discussed above, the reliability of the Chemworld data, which is the only information on the record that shows value/volume data different from that reported by Qingdao Sea-line, does not, in this case, appear to be reliable enough for the Department to reject Qingdao Sea-line's sales data. Thus, while the Department agrees with Petitioners that it is appropriate for the Department to examine and consider alternative information, such as Chemworld's compilation of PRC customs data, in evaluating the bona fides of sales, the Chemworld data on the record of this review is not a sufficient basis on which to find Qingdao Sea-line's sale to be not bona fide.

Issue 2: Surrogate Valuation of Garlic Bulbs

Qingdao Sea-line argues that the Department's selection of non-contemporaneous information for the surrogate value of garlic bulbs is not supported by substantial evidence or not otherwise in accordance with the law. Qingdao Sea-line points out that in the Preliminary Results, the Department used the values of Super-A grade garlic reported in Azadpur Agricultural Produce Marketing Committee's APMC Market Information Bulletin (Azadpur APMC) during the period November 1, 2007 through February 6, 2008, for the surrogate value of garlic bulbs, and that this database is not contemporaneous with the POR. See Re: Preliminary Results of the 2008-2009 New Shipper Review of Fresh Garlic from the People's Republic of China: Surrogate Values (April 27, 2010) (Surrogate Value Memorandum). Qingdao Sea-line argues that the surrogate values the Department relied upon were from one year prior to the POR and cover a very limited time (i.e., three months and six days). Qingdao Sea-line contends that while the Department has precedent to use non-contemporaneous information, the time gap between the selected data and the POR in that case was very short, and there was actually some overlap between the periods. See Fresh Garlic from the People's Republic of China: Final Results of the Eleventh NSRs, 72 FR 54896 (September 27, 2007), and accompanying Issues and Decision Memorandum at Comment 1. However, Qingdao Sea-line argues, the data used in the current review comes from a time period more than one year prior to the POR.

Qingdao Sea-line contends that because the Department used the non-contemporaneous information in the Preliminary Results, the surrogate value for garlic bulbs was heavily skewed. Further, Qingdao Sea-line asserts that there is a large price difference in A grade garlic between the POR months and the corresponding period of time in the previous year. See Qingdao Sea-line's Case Brief at 9. Because the prices during the POR were dramatically lower than the corresponding period in 2007-2008, Qingdao Sea-line contends it is very important that the Department use contemporaneous information as the surrogate value for the final results.

In addition, Qingdao Sea-line contends the Department did not provide convincing and valid reasoning to explain why it deviated from its practice to use contemporaneous information for the valuation of the factors of production (FOP) in the Preliminary Results. Qingdao Sea-line argues that, although there was no Super-A grade garlic reported in the Azadpur APMC during

the POR, the Department should not compromise the contemporaneity of the garlic bulb surrogate value to use specific Super-A grade-sized prices. Qingdao Sea-line again asserts that there is a huge difference between the price of garlic in the pre-POR period and the POR, and therefore, the use of non-contemporaneous data distorts the surrogate value significantly. See Qingdao Sea-line's Case Brief at 9. Further, Qingdao Sea-line contends there is no evidence on the record that explains why, from February 6, 2008 until the end of the POR, there were no Super-A grade garlic transactions recorded in the Azadpur APMC market data. See Surrogate Value Memorandum. Qingdao Sea-line argues that, if the Super-A grade garlic transactions were so rare in the market, Super-A grade garlic is not representative of the broad market average needed for surrogate value purposes.

Qingdao Sea-line also argues that while the use of size as the only criterion for selecting a surrogate value appears to create an "apple to apple" comparison, it actually does not. Qingdao Sea-line explains, that in the agricultural industry, production is "heavily affected by the natural endowments of land, soil and climates; labors' growing skills, traditions and experiences; and the prices of the importation of same or similar products, etc." See Qingdao Sea-line's Case Brief at 10. Qingdao Sea-line argues that the PRC, because of advantageous natural endowments, has much more garlic production and much lower garlic prices than India. Further, Qingdao Sea-line claims that indigenous Indian garlic tends to be smaller than the Chinese varieties. Qingdao Sea-line contends it is the lower garlic production and scarcity of large-bulb garlic in India that results in higher prices for large-bulb garlic in India than in the PRC. Because of these factors, Qingdao Sea-line argues that the Department must give sufficient proof that it needs to sacrifice the contemporaneous quality of data for the sake of using only Super-A grade garlic data. Qingdao Sea-line explains that the Department's methodology is not only awkward, but also damaging to the accurate calculation of an antidumping duty margin. Qingdao Sea-line notes there are two sets of contemporaneous databases currently on the record, the Azadpur APMC market data for A grade garlic and the Agmarknet data, provided by Qingdao Sea-line, and therefore, the Department has no reason not to use contemporaneous information in the final results.

Finally, Qingdao Sea-line argues that, if the Department continues to use the non-contemporaneous data it used in the Preliminary Results, the surrogate value for whole garlic bulbs was incorrectly calculated. Specifically, Qingdao Sea-line contends that the Department stated in its Surrogate Value Memorandum that it would subtract seven percent from the value of the average of Super-A grade garlic, in accordance with the fees noted by the Azadpur APMC price data used by the Department, but then failed to do so. Qingdao Sea-line requests that this error be corrected for the final results.

Petitioners argue that because the Department did not have Super-A grade garlic pricing that was exactly contemporaneous with the November 2008 through April 2009 POR, it reasonably chose to use pricing information for Super-A grade garlic bulbs for the most recently available six-month period (i.e., data from August 2007 through January 2008), which ended ten months before the POR of this proceeding. See, e.g., Surrogate Value Memorandum at 3 and Petitioners' January 14, 2010 Surrogate Value Letter at Exhibits 1 and 2. Petitioners contend that the Department's preliminary decision to rely on these pricing data for Super-A grade garlic bulbs is appropriate for several reasons.

First, Petitioners argue that the Department routinely uses data from slightly different periods as a surrogate to value the FOPs when contemporaneous values are not available in a particular proceeding. Specifically, Petitioners note, in past garlic reviews the Department has used Limtex Tea Limited's (Limtex) 2004 and 2005 financial statements for review periods covering November 2005 through October 2006, and November 2006 through October 2007. In relying on the non-contemporaneous financial statements of Limtex in those proceedings, Petitioners explain, the Department stated that "we continue to find that the non-integrated 2004-2005 Limtex financial statements are the best available information on the record to value overhead, SG&A, and profit..." See Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the 12th Administrative Review, 73 FR 34251 (June 9, 2008) and accompanying Issues and Decisions Memorandum at Comment 3 (12th AR Final Results Results) and Fresh Garlic From the People's Republic of China: Final Results and Partial Rescission of the 13th Antidumping Duty Administrative Review and New Shipper Reviews,⁷⁴ FR 29174 (June 8, 2009) and accompanying Issues and Decisions Memorandum at Comment 3 (13th AR/NSR Final Results Results). Thus, Petitioners contend, the Department has a well-established policy of relying on surrogate value data that is not contemporaneous with the POR in other segments of this proceeding, and the slight non-contemporaneity of the Super-A grade garlic pricing data does not detract from it being the best surrogate value available in this proceeding for raw garlic.

Further, Petitioners point out that, while Qingdao Sea-line attempts to find fault with the Department for failing to "request any substantial evidence on why Super-A grade transactions had not occurred in Azadpur APMC market for more than a year...", Sea-line itself failed to raise concerns regarding the timeliness of the Azadpur APMC market Super-A grade garlic data or offer alternative data that could reasonably serve as a surrogate value to the large garlic it exported to the United States earlier in the proceeding. See Qingdao Sea-line's Case Brief at 3. Therefore, Petitioners argue, the Department should reject Qingdao Sea-line's argument.

Finally, regarding the subtraction of market fees, Petitioners argue it is their view that such fees would be included in the price charged to a garlic processor and thus should not be subtracted from the market prices. Because the fees are not taxes or other government-imposed charges, Petitioners argue that the Department should continue its preliminary methodology by not deducting such market fees in the final results calculations.

Department's Position: We have determined that it is appropriate to use Super-A grade garlic prices from the Azadpur APMC from the prior POR (properly adjusted to make it contemporaneous with the POR). When selecting possible surrogate values for use in an NME proceeding, the Department's preference is to use, where possible and in no particular order, a publicly available value which is: (1) an average non-export value; (2) representative of a range of prices within the POI/POR; (3) product-specific; and (4) duty and tax-exclusive.³

In past segments of this proceeding, the Department has consistently found Azadpur APMC price data to be the "best available information." In particular, the Department has determined

³ See Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 from the People's Republic of China, 69 FR 67304 (November 17, 2004) and accompanying Issues and Decision Memorandum at Comment 3.

that the size-specific garlic prices available from the Azadpur APMC are preferable because garlic size is an important price factor. Regarding Qingdao Sea-Line's argument that we should not use the Azadpur APMC Super-A grade garlic prices because they are not contemporaneous, we find that it would not be appropriate for the Department to disregard surrogate value information which is otherwise specific to the input in question on the basis that it is pre-POR data. See e.g., Notice of Final Determination of Sales at Less than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers from the People's Republic of China, 69 FR 20594 (April 16, 2004) at Comment 11.

With respect to Qingdao Sea-line's arguments regarding the "relationship" between the price trend for A grade garlic during the POR and the price of Super-A grade garlic used by the Department, we note that there is no historical price information on the record of this review to support Qingdao Sea-line's apparent contention that price trends for Super-A grade would mirror those of the A grade price. Moreover, Qingdao Sea-line's own arguments about the relative scarcity of large-bulb garlic (i.e., Super-A grade) in India resulting in higher prices for large-bulb garlic contradict its contention that prices for Super-A grade (the largest Indian variety) would mirror those of smaller sized garlic. Finally, notwithstanding Qingdao Sea-line's arguments to the contrary, the Department has previously found that Azadpur APMC market data is representative of a broad market average. See e.g., 13th AR/NSR Final Results.

Finally, the Department will deduct marketing fees charged at the Azadpur APMC market from the surrogate value for these final results. In the Preliminary Results, the Department stated in its Surrogate Value Memorandum⁴ that it would subtract seven percent from the value of the average of Super-A grade garlic, in accordance with the fees noted by the Azadpur APMC price data used by the Department. See Surrogate Value Memorandum at 3. However, the Department instead used the average value with the seven percent included. Therefore, for these final results, the Department is using the value for Super-A grade garlic, minus the seven percent in fees, as the surrogate value for garlic bulbs. See Memorandum to the File, though Thomas Gilgunn, Program Manager, Office 6, Import Administration, From: Scott Lindsay, Case Analyst, Office 6, Import Administration, Subject: New Shipper Reviews of Fresh Garlic from the People's Republic of China: Calculation Memorandum for the Final Results of Qingdao Sea-line International Trading Co. Ltd. (Final Calculation Memorandum).

Issue 3: Use of Indian Wholesale Price Index as Inflator for Surrogate Values

Qingdao Sea-line argues that the Department's use of the Indian wholesale price index (WPI) as an inflator for non-contemporaneous surrogate values for garlic was less accurate than other methods. Qingdao Sea-line suggests two alternative methods: 1) a product-specific WPI calculated by Qingdao Sea-line, or 2) the calculation of a ratio between non-contemporaneous A grade and Super-A grade garlic values and application of that ratio to contemporaneous surrogate values.

Qingdao Sea-line argues that the Indian WPI the Department used in the Preliminary Results, as published by the International Monetary Fund (IMF) in the International Financial Statistics, is a

⁴ See Preliminary Results of the 2008-2009 New Shipper Review of Fresh Garlic from the People's Republic of China: Surrogate Values (April 27, 2010) (Surrogate Value Memorandum).

WPI for all commodities in India rather than a WPI specific to garlic. Qingdao Sea-line argues that using WPI data for all commodities further distorts the value of Indian garlic during the POR. To demonstrate this, Qingdao Sea-line compares the WPI adjusted Super-A grade garlic value taken from the Azadpur APMC market data, which the Department used in the Preliminary Results (58.734 Rs/kg), and compares this value with the maximum average price reported in Agmarknet (the surrogate value prices provided by Qingdao Sea-line) during the POR (18.27 Rs/kg). See Qingdao Sea-line's Case Brief at 13. Qingdao Sea-line argues that the discrepancy between these two values shows the absurdity of the Department's calculation methodology, and therefore the fictional nature of the 58.734 Rs/kg used in the Preliminary Results.

Therefore, Qingdao Sea-line argues the Department must change its calculation methodology for the final results to arrive at a more reasonable and accurate garlic surrogate value. To best achieve this, Qingdao Sea-line first suggests that the Department use a contemporaneous price data source, either the Agmarknet data that it provided or the Azadpur APMC market data for A grade garlic, as this would eliminate the need to make any price adjustment at all. However, failing that, Qingdao Sea-line states that, if the Department is going to use non-contemporaneous data for calculating a garlic surrogate value, it should do so using a different inflator methodology.

The first alternative inflator methodology Qingdao Sea-line suggests is to use its calculated garlic WPI in place of the "all commodities" WPI the Department used in the Preliminary Results. See Qingdao Sea-line's Case Brief at 14-15. Qingdao Sea-line argues that the indices for garlic and for all commodities in India during the current POR trend in different directions: the indices for garlic went distinctively downward while the index for all commodities went slightly upward. Id. at 12. Based on this, Qingdao Sea-line contends that the "all commodities" WPI is not reflective of the garlic industry and the resulting adjusted garlic price is not accurate. To make an accurate calculation, Qingdao Sea-line argues the Department should follow its normal practice of using product-specific information, take into consideration the unique nature of the garlic WPI in this case, and adjust the non-contemporaneous data using its garlic-specific WPI.

The second method Qingdao Sea-line suggests is to find a ratio between the Super-A grade and A grade garlic from the known pre-POR data, and apply this ratio to the known average of A grade garlic during the POR, to derive the Super-A grade garlic value during the POR. Qingdao Sea-line argues that the Super-A grade and A grade ratio is relatively constant. Therefore, Qingdao Sea-line asserts, the Department can calculate this ratio using the Azadpur APMC market data for November 2007 through April 2008, and apply it to the POR data to achieve an accurate surrogate value.

Petitioners counter that, consistent with its well-established practice, the Department routinely adjusts non-contemporaneous data using India's WPI. See, e.g., Non-Frozen Apple Juice Concentrate from the People's Republic of China: Preliminary Results for the Administrative Review, 74 FR 31238 (June 30, 2009) (Apple Juice from the PRC Preliminary Results), where the Department explains it is "the Department's practice to calculate price index adjustors to inflate or deflate, as appropriate, surrogate values that are not contemporaneous with the POR using the wholesale price index ('WPI') for the subject country." Petitioners also contend that,

contrary to the representations in Sea-line's case brief, there is no "garlic WPI." Petitioners argue that the "garlic WPI" Qingdao Sea-line references is simply an index created by Qingdao Sea-line for this proceeding in order to argue for an adjustment that it prefers, *i.e.*, one that assumes that Super-A values move in line with values for lower-quality grades of garlic. Petitioners states that Qingdao Sea-line's case brief cites no precedent to support its contention that the Department should rely on the nonexistent WPI for garlic (and, thus, abandon the Department's normal inflator methodology) in favor of Qingdao Sea-line's alternative approach. As such, Petitioners argue there is no reason for the Department to abandon its normal practice in favor of an unprecedented method invented by a respondent for a self-serving purpose.

In addition, Petitioners argue that, in the past, the Department has placed substantial weight on grade-specificity in valuing raw garlic, noting that it "has concluded for the last several reviews that the vast majority of the evidence indicates that size of the garlic bulbs is given significant value in the marketplace." See 13th AR/NSR Final Results at Comment 2. Petitioners contend that the Department correctly used Super-A grade garlic as a surrogate based on the dimension of the garlic sold. Petitioners report that in its prior findings under this proceeding, the Department has stated explicitly that it finds Azadpur APMC Super-A grade pricing "to be the best available information to value the garlic bulb input (the intermediate product), because it is specific to the product in question, represents a broad market average, is publicly available, and is tax and duty exclusive." See 13th AR/NSR Final Results at Comment 2. Further, Petitioners state that although Qingdao Sea-line would have the Department presume that Super-A and A grade garlic prices are constant, in relative terms, there is no information on the record to support this theory. For all of the above reasons, Petitioners argue that the Department should reject Qingdao Sea-line's arguments and continue to use a grade-specific, size-specific, WPI-adjusted value for raw garlic in accordance with its longstanding practice and methodology, and consistent with its determination in the Preliminary Results.

Department's Position:

We have determined that it is appropriate to apply a single WPI from the surrogate country, using all commodities, as determined by data published in the International Financial Statistics by the IMF. As an initial matter, it is the Department's practice to use a single, country-wide WPI. See *e.g.*, Apple Juice from the PRC Preliminary Results, unchanged in Non-Frozen Apple Juice Concentrate from the People's Republic of China: Final Results for the Administrative Review, 74 FR 50955 (Oct. 2, 2009). Further, in prior reviews of fresh garlic, we have also used the same WPI methodology utilized in the instant case. See *e.g.*, 12th AR Final Results and 13th AR/NSR Final Results.

Moreover, we note that Qingdao Sea-line has not provided substantial evidence that a change in practice to either of its two alternative methods would yield a more accurate adjustment to the garlic surrogate value than the method the Department used in the Preliminary Results. First, with regard to Qingdao Sea-line's WPI index for garlic, Qingdao Sea-line has provided no information with respect to the government of India garlic price data which presumably underpins the garlic WPI it calculated. Second, with respect to its proposed garlic grade ratio adjustment method, even were the Department to accept Qingdao Sea-line's claim that the price relationship between Super-A grade and A grade prices remains "relatively constant," there is

insufficient historical Azadpur APMC price data (Super-A grade and A grade) on the record of this review to serve as the basis for a meaningful price ratio.

Further, the Department finds Qingdao Sea-line's position regarding the discrepancy between Super-A grade garlic prices from the previous POR and Agmarknet market prices from the POR to be unpersuasive. Agmarknet data is an average price of all garlic sales. As Agmarknet does not report size-specific prices, Qingdao Sea-line's comparison of pre-POR Azadpur APMC Super-A garlic with POR Agmarknet prices is not meaningful. Therefore, the Department finds there is no reason to deviate from its established practice, and will continue to calculate the WPI in accordance with the method used in the Preliminary Results.

Issue 4: Financial Ratios

In the Preliminary Results, the Department used Tata Tea Ltd.'s (Tata Tea) and Limtex's financial data. Qingdao Sea-line argues that the selection of Tata Tea as a surrogate company for calculating ratios is inappropriate. Specifically, Qingdao Sea-line contends the Department should not use Tata Tea's financial ratios for the final results because: 1) in the past, the Department has found Tata Tea's production process to be more comparable to that of peeled garlic, and 2) because Tata Tea's financial ratios include products other than tea.

Qingdao Sea-line notes that the Department reiterated in the accompanying Issues and Decision Memorandum for the 14th NSR that the Department examines the surrogate company's production experiences when selecting financial statements on which to base a surrogate financial ratio. See Fresh Garlic from the People's Republic of China: Final Results and Final Rescission, In Part, of New Shipper Reviews, 74 FR 50952 (October 2, 2009) (14th NSR Final Results), and accompanying Issues and Decision Memorandum at Comment 7. Qingdao Sea-line argues that selecting Tata Tea as a surrogate company for Qingdao Sea-line, a whole garlic producer/exporter, contradicts the Department's previous decision that Tata Tea's production process was more comparable to that of peeled garlic. Qingdao Sea-line asserts that in the ninth administrative review (AR), the Department found that:

“We have, however, declined to use the financial statements of Tata for the following reasons. Unlike the selected tea companies, in addition to cultivating and manufacturing black tea, Tata is also very heavily engaged in the production of instant tea, packet tea and other value-added forms of bulk tea. While its financials do not specifically break out its sales in terms of bulk, packet or other value-added forms of tea, there are other indications that most of its costs and/or sales reflect the production of packet and other value-added forms of tea. The financial statement notes that eighty-six percent of its consolidated turnover is a result of its branded tea products. Moreover, Tata's energy expenses for 2003-2004, for example, disproportionately reflect its production of packet tea. The electricity consumed in the production of packet tea is over four times the electricity usage for bulk tea. Similarly, the consumption of furnace oil is nearly seventeen times higher. Furthermore, consistent with Garlic 8th Review at Comment 7, we note that it is our practice to use financial data when available, from a company with a comparable production process rather than data based on production and processing of a product that is more highly processed or preserved prior to sale.”

See Fresh Garlic from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 34082 (June 13, 2005) (9th AR Final Results), and accompanying Issues and Decision Memorandum at 34-35.

Further, Qingdao Sea-line argues that in the 12th AR, the Department decided that “we continue to find that the non-integrated 2004-2005 Limtex financial statements are the best available information on the record to value overhead, SG&A, and profit, rather than the integrated financial statement of Parry Agro and Tata Tea.” See 12th AR Final Results and accompanying Issues and Decision Memorandum at Comment 3. Then, in the 13th AR and NSRs, Qingdao Sea-line notes the Department stated that “the Department is using ADF’s and Tata Tea’s financial data since their production processes are more comparable to that of peeled garlic, which comprises an increasing share of all PRC garlic imports.” See 13th AR/NSR Final Results, accompanying Issues and Decision Memorandum at Comment 3. Lastly, in the 14th NSR, Qingdao Sea-line points out that the Department continued to regard Tata Tea’s production processes as more comparable to that of peeled garlic, which comprises an increasing share of all PRC garlic imports. See 14th NSR Final Results and accompanying Issues and Decision memorandum at Comment 7.

Qingdao Sea-line argues that despite the Department’s previous decisions regarding Tata Tea, in the Preliminary Results the Department found that “we believe that calculating an average of these two Indian tea processors provides financial ratios that best reflect the broader experiences of the garlic industry and is consistent with our practices during the last three reviews.” See Surrogate Value Memorandum at 5. Qingdao Sea-line asserts that this decision neglects the fact that the subject merchandise under this review is whole garlic rather than peeled garlic. Qingdao Sea-line contends that the production process of surrogate companies should be specific to the respondent under current review, instead of “the broader experiences of garlic industry” in the PRC. Qingdao Sea-line notes that the Department previously decided that “while the statute does not define ‘comparable merchandise’ in selecting surrogate values for overhead, SG&A and profit, the Department has considered whether the surrogate company’s products have similar production processes, end uses and physical characteristics as the respondents.” See Fresh Garlic From the People’s Republic of China: Final Results of the Eleventh New Shipper Reviews, 72 FR 54896 (September 20, 2007) and accompanying Issues and Decision Memorandum at 12. Therefore, Qingdao Sea-line argues, the Department, in order to be consistent with its practices during the last three reviews, *i.e.* finding Tata Tea’s production process more comparable to that of peeled garlic than that of whole garlic, should not use Tata Tea in the final results.

Furthermore, Qingdao Sea-line argues that the Department should not use Tata Tea’s consolidated accounts for the financial ratios because the financial information includes various products other than tea products. Qingdao Sea-line notes that the financial ratios summarized by Petitioners in their January 14, 2010 submission regarding surrogate values were based on Tata Tea’s consolidated statements. See Petitioners’ January 14, 2010 Surrogate Value Letter, Tata Tea Financial Statements at 93-170. Qingdao Sea-line asserts that these consolidated financial statements include financial information of Tata Tea’s subsidiaries, associates, and joint ventures (Tata Tea Group). See id at 93.

Qingdao Sea-line explains that although the Department has stated that it does not examine “the surrogate company’s ‘business experience’ (i.e. size, profit, etc.)” (see 14th NSR Final Results and accompanying Issues and Decision Memorandum at 24), Qingdao Sea-line notes that Tata Tea’s diversified multinational operation also expands to include products far beyond tea, which was determined by the Department to be a comparable product of garlic. The products Tata Tea Group sells range from tea to coffee, pepper, cardamom, spices, timber, veneer/plywood and mineral water. Specifically, Qingdao Sea-line points out, among these products, the sale of coffee in the Tata Tea Group accounts for 20.88 percent of its sales and services. See Petitioners’ January 14, 2010 Surrogate Value Letter, Tata Tea Financial Statements at 108. Further, Qingdao Sea-line argues, the Department has previously determined that coffee is not a comparable product to garlic:

“When evaluating the production processes, the Department has taken into account the complexity and duration of the processes and the types of equipment used in production. Our review of the information submitted by the parties, illustrating the production process of coffee in general and in India, specifically, revealed that the coffee industry is not as comparable with the operations of the respondent garlic companies as the tea industry. The information leads us to conclude that coffee production is more complex than tea or garlic production...we find that based on the information available on the record, the coffee industry in India does not represent as accurate a surrogate for garlic production as does the tea industry.”

See 9th AR Final Results and accompanying Issues and Decision Memorandum at 35.

Therefore, Qingdao Sea-line concludes, in order to be consistent with Department precedent, the Department should not select Tata Tea for the surrogate financial ratios of a producer and exporter of whole garlic. Further, the Department should not adopt financial ratios derived from Tata Tea Group because Tata Tea Group produces and sells various products other than tea products, including coffee, which was determined by the Department to not be representative of garlic production.

Petitioners contend that Qingdao Sea-line’s arguments should be rejected. Petitioners note that Qingdao Sea-line itself acknowledges the Department’s reasoning in more recent reviews that peeled garlic “comprises an increasing share of all PRC garlic imports.” See 13th AR/NSR Final Results at 17. Petitioners argue that the shift in product mix over the years is a critical element of the Department’s surrogate financial ratio analysis and it cannot be abandoned. Petitioners continue that, in most new shipper proceedings, the respondent has made an orchestrated transaction in order to try to establish a lower deposit rate. The surrogate financial ratio should reflect the industry reality (i.e., in this case the ascendance of peeled garlic vis-a-vis whole-bulb garlic), even if a respondent decides to export a shipment of whole garlic during the POR for purposes of requesting an NSR. According to Petitioners, a respondent cannot be allowed to manipulate the normal value (NV) analysis to establish a deposit rate based only on whole garlic because that deposit rate will apply to the respondent’s future sales of all garlic, including peeled garlic. Petitioners contend that Qingdao Sea-line acknowledges the Department’s intent to use “financial ratios that best reflect the broader experiences of the garlic industry and is consistent with our practices during the last three reviews.” See Qingdao Sea-line’s Case Brief at 17.

Further, Petitioners note that Qingdao Sea-line concedes that this multi-company approach has been in use for several consecutive segments immediately prior to the instant proceeding. Therefore, Petitioners contend, exporters, including Qingdao Sea-line, were on notice as to the blended financial ratio method reflecting industry reality.

In addition, Petitioners argue that the Department must not abandon its previous findings that Tata Tea's consolidated financial experience is the best surrogate for the experience of a Chinese garlic processor. See Qingdao Sea-line's Case Brief at 18. According to Petitioners, Qingdao Sea-line concedes that the Department "does not examine the surrogate company's business experience" but, instead, simply takes the surrogate in its entirety. Id. at 18. Petitioners argue that the Department's goal is to substitute the actual, market-economy financial experience of the surrogate in its entirety, and not to guess which aspects of the surrogate's experience would or would not be applicable if the NME entity were operating in a market environment. For all of the above reasons, Petitioners argue that the Department should continue to use the consolidated financial experience of Tata Tea for its final results calculations.

Department's Position:

We have determined that it is appropriate to calculate a single set of surrogate financial ratios applicable to the production and sales of all subject merchandise for these final results using both Tata Tea's and Limtex's financial data. Tata Tea and Limtex are tea processors. Since the 2002-2003 administrative review, the Department has considered tea processing to be sufficiently similar to garlic processing in that neither product is highly processed or preserved prior to sale. Moreover, we note that it is the Department's preference to use financial data from more than one surrogate producer to reflect the broader experience of the surrogate industry. See e.g., Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Sixth Antidumping Duty Administrative Review and Final Results of the Ninth New Shipper Review, 69 FR 42039 (July 13, 2004) and accompanying Issues and Decision Memorandum at Comment 2; see also, Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms from the People's Republic of China, 66 FR 31204 (June 11, 2001) and accompanying Issues and Decisions Memorandum at Comment 3, and Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping, 75 FR 20335 (April 19, 2010) and accompanying Issues and Decision Memorandum at Comment 13.

In addition, for these final results, the Department is continuing to rely on Tata Tea's consolidated financial data, as the Department finds that it reflects the best available information on the record. Qingdao Sea-line has mischaracterized the Department's previous findings with respect to Tata Tea Group's financial statements. First, in the 9th AR Final Results, the Department did not find coffee to be a poor comparison product with garlic, as argued by Qingdao Sea-line. Instead, the Department found "that the coffee industry is not as comparable with the operations of the respondent garlic companies as the tea industry." See 9th AR Final Results and accompanying Issues and Decisions Memorandum at 35. Moreover, as conceded by Qingdao Sea-line, sales of tea comprise the vast majority of Tata Tea Group's sales, with sales of coffee representing less than one quarter of total sales. As such, the Department finds Qingdao Sea-line's arguments regarding the inappropriateness of the use of Tata Tea Group as a surrogate

company to be unpersuasive, and will therefore continue to use Tata Tea Group's consolidated financial statements for the final results.

Issue 5: Wage Rates

In its case brief, Qingdao Sea-line argued that the Department utilized the incorrect wage rate in the Preliminary Results. Petitioners argue that the Department should apply a surrogate wage rate based on labor rates in countries that have per-capita gross national income (GNI) levels comparable to China's GNI.

Department's Position:

As a consequence of the Court of Appeals for the Federal Circuit's (CAFC) ruling in Dorbest Limited et. al. v. United States, 604 F.3d 1363 (Fed. Cir. 2010) (Dorbest), the Department is no longer relying on the regression-based wage rate described in 19 CFR 351.408(c)(3). The Department is continuing to evaluate options for determining labor values in light of the recent CAFC decision. On September 3, 2010, the Department placed a memorandum on the record regarding its reconsideration of its valuation of the labor wage rate for this review. The Department gave interested parties until September 15, 2010 to comment specifically to the proposed labor wage rate methodology. See Memorandum to the File, Fresh Garlic from the People's Republic of China: Wage Rate Data (September 3, 2010). The Department received no comments. For these final results, we have calculated an hourly wage rate to use in valuing Qingdao Sea-line's reported labor input by averaging earnings and/or wages in countries that are economically comparable to the PRC and that are significant producers of comparable merchandise.

To achieve a labor value that is based on the best available information for these final results, we have relied on labor data from several countries determined to be both economically comparable to the PRC, and significant producers of comparable merchandise.

First, in order to determine the economically comparable surrogate countries from which to calculate a surrogate wage rate, the Department looked to the Surrogate Country Memorandum.⁵ Early in this proceeding, the Department selected six countries for consideration as the surrogate country for this review. To determine which countries were at comparable levels of economic development to the PRC, the Department placed primary emphasis on GNI.⁶ The Department relies on GNI to generate its initial list of countries considered to be economically comparable to the PRC. In this review, the list of potential surrogate countries found to be economically comparable to the PRC included India, the Philippines, Indonesia, Colombia, Thailand, and Peru. The Department used the high- and low-income countries identified in the Surrogate Country Memorandum list as "bookends" and then identified all countries in the World Bank's World Development Report for 2009 with per capita incomes (using the 2007 GNIs from the 2009

⁵ See Memorandum to Thomas Gilgunn, From: Kelly Parkhill, Acting Director, Office of Policy, Request for a List of Surrogate Countries for a New Shipper Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China, September 15, 2009 (Surrogate Country Memorandum).

⁶ See 19 CFR 351.408(b).

Expected Wages of Selected NME Countries) that placed them between these “bookends.” This resulted in 50 countries, ranging from India with USD 950 GNI to Colombia with USD 4,100.⁷

Regarding the second criterion of “significant producer,” the Department identified all countries which had exports of comparable merchandise (defined as HTS 0703.20, 0710.80, 0711.90, 2005.90) between 2007 and 2009.⁸ After screening for countries that had exports of comparable merchandise, we found that 32 of the 50 countries designated as economically comparable to the PRC are also significant producers. In this case, we have defined a “significant producer” as a country that has exported comparable merchandise from 2007 through 2009. The antidumping statute and regulations are silent in defining a “significant producer,” and the antidumping statute grants the Department discretion to look at various data sources for determining the best available information. See section 733(c) of the Act. Moreover, while the legislative history provides that the “term ‘significant producer’ includes any country that is a significant net exporter”,⁹ it does not preclude reliance on additional or alternative metrics. In practice, the Department has relied on other indices for determining whether a country is a significant producer. For example, in Wooden Bedroom Furniture from the People’s Republic of China: Preliminary Results of Antidumping Duty New Shipper Review, 75 FR 9581, 9584 (March 3, 2010), the Department relied on production data for selecting the primary surrogate country. In this case, we have relied on countries with exports of comparable merchandise as significant producers.

For purposes of valuing wages in this review, the Department determines the following 32 countries to be both economically comparable to the PRC and significant producers of comparable merchandise: Albania, Algeria, Bhutan, Bolivia, Bosnia & Herzegovina, Colombia, Dominican Republic, Ecuador, Egypt, El Salvador, Fiji, Guatemala, Guyana, India, Indonesia, Jordan, Macedonia, Morocco, Namibia, Nicaragua, Paraguay, Peru, Philippines, Samoa (Western), Sri Lanka, Sudan, Swaziland, Syria, Thailand, Tunisia, Ukraine, and Yemen.

Third, of the 32 countries that the Department determined were both economically comparable to the PRC and significant producers of comparable merchandise, the Department identified those with the necessary wage data. In doing so, the Department has continued to rely upon International Labor Organization’s (ILO) Chapter 5B data “earnings”, if available, and “wages”

⁷ See Final Calculation Memorandum at Exhibit 1.

⁸ The export data is obtained from the Global Trade Atlas. See Final Calculation Memorandum, at Exhibit 1.

⁹ See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Conf. Rep. No. 576, 590, 100th Cong. 2nd Sess. (1988), reprinted in 134 Cong. Rec. H2031 (daily ed. April 20, 1988).

if not.¹⁰ We used the most recent data within five years of the base year (2007) and adjusted to 2009¹¹ using the relevant Consumer Price Index (CPI).¹² Of the 32 countries that the Department has determined are both economically comparable and significant producers of comparable merchandise, 12 countries, *i.e.*, Algeria, Bhutan, Bolivia, Morocco, Namibia, Samoa (Western), Sri Lanka, Sudan, Swaziland, Syria, Tunisia, and Yemen, were not used in the wage rate valuation because there was no earnings or wage data available. The remaining countries reported either earnings or wage rate data to the ILO within the last five years.¹³

The Department relied on data from the following countries to arrive at its wage rate in these final results: Albania, Bosnia & Herzegovina, Colombia, Dominican Republic, Ecuador, Egypt, El Salvador, Fiji, Guatemala, Guyana, India, Indonesia, Jordan, Macedonia, Nicaragua, Paraguay, Peru, Philippines, Thailand, and Ukraine. The Department calculated a simple average of the earnings or wage rates as appropriate from these 20 countries, which resulted in a wage rate derived from comparable economies that are also significant producers of the comparable merchandise, consistent with the CAFC's ruling in Dorbest and the statutory requirements of section 773(c) of the Act.

Issue 6: Cold Storage

Qingdao Sea-line argues that the Department incorrectly included cold storage electricity and cold storage direct and indirect labor in the cost of manufacturing. Qingdao Sea-line contends that according to the intermediate input methodology adopted by the Department, the surrogate value of raw garlic bulb already includes the cold storage costs. Therefore, Qingdao Sea-line requests that the Department to remove these costs from the NV calculation.

¹⁰ The Department maintains its current preference for “earnings” over “wages” data under Chapter 5B. However, under the previous practice, the Department was typically able to obtain data from somewhere between 50-60+ countries. Given that the current basket now includes 32 countries, the Department found that our long-standing preference for a robust basket outweighs our exclusive preference for “earnings” data. We note that several countries that met the statutory criteria for economic comparability and significant production, such as Indonesia and Thailand, reported only a “wage” rate. Thus, if earnings data is unavailable from the base year (2007) of the previous five years (2002-2006) for certain countries that are economically comparable and significant producers of comparable merchandise, the Department will use “wage” data, if available, from the base year or previous five years. The hierarchy for data suitability described in Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716 (October 19, 2006) (Antidumping Methodologies) still applies for selecting among multiple data points within the “earnings” or “wage” data. This allows the Department to maintain consistency as much as possible across the basket.

¹¹ As the POR for this review is November 1, 2008 through April 30, 2009, which has two months in 2008 and four months in 2009, the Department will use 2009 as the base period for determining the CPI for adjusting wage rates.

¹² Under the Department's regression analysis, the Department limited the years of data it would analyze to a two-year period. See Antidumping Methodologies, 71 FR at 61720. However, because the overall number of countries being considered in the regression methodology was much larger than the list of countries now being considered in the Department's calculations, the pool of wage rates from which we could draw from two years' worth of data was still significantly larger than the pool from which we may now draw using five years' worth of data (in addition to the base year). The Department believes it is acceptable to review ILO data up to five years prior to the base year as necessary (as we have previously), albeit adjusted using the CPI. See Expected Non-Market Economy Wages: Request for Comment on Calculation Methodology, 70 FR 37761, 37762 (June 30, 2005). In this manner, the Department will be able to capture the maximum amount of countries that are significant producers of comparable merchandise, including those countries that choose not to report their data on an annual basis. See also CPI data placed on record, obtained from the IMF's International Financial Statistics in the Final Calculation Memorandum.

¹³ See ILO's Yearbook of Labour Statistics.

Petitioners counter that costs related to cold storage should not, as Qingdao Sea-line advocates, be ignored. Petitioners argue that Qingdao Sea-line appears to be implying that such charges were incurred prior to receipt of the raw garlic by the garlic processing facility, but notes that Qingdao Sea-line does not cite to any support on the record for this apparent contention. Petitioners conclude that the Department should therefore continue to value these inputs as factors relating to the intermediate input methodology.

Department’s Position:

The Department has determined that labor and energy FOPs associated with cold storage should be valued separately from the intermediate input in its calculation of NV for Qingdao Sea-line for the final results. The intermediate input methodology in this case dictates that the starting point for the calculation of NV will be the surrogate value of the garlic bulb (the intermediate input), rather than the value of the FOPs used to produce the intermediate input. See Memorandum re: 2008-2009 New Shipper Review of Fresh Garlic from the People’s Republic of China: Intermediate Input Methodology (April 27, 2010). Jinxiang County Juxinyuan Trading Co. Ltd. (Jinxiang County), Qingdao Sea-line’s producer, reported that: a) it does not grow the garlic, and b) it incurred cold storage related expenses after it obtained the raw garlic bulb. Therefore, these cold storage expenses were incurred by Jinxiang County after it took possession of the raw garlic. As such, the Department has continued to include separate cold storage labor and electricity costs in the calculation for the final results.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If accepted, we will publish the final results of review and the final dumping margins in the Federal Register.

AGREE_____DISAGREE_____

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

Date