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AD/CVD 08: The Garlic Team

MEMORANDUM TO: David M. Spooner  
Assistant Secretary  
for Import Administration

FROM: Stephen J. Claeys  
Deputy Assistant Secretary  
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Administrative Review  
and New Shipper Reviews of the Antidumping Duty Order on  
Fresh Garlic from the People's Republic of China

#### Summary

We have analyzed the November 2005 submissions, the January 2006 submissions, case and rebuttal briefs, and the March 2006 submissions of interested parties in the 2003-2004 administrative review and new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China ("PRC"). The period of review ("POR") is November 1, 2003, through October 31, 2004. As a result of our analysis, we have made changes in the margin calculation for thirteen respondents. In addition, we identified two clerical errors in Fresh Garlic from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Preliminary Results of New Shipper Reviews, 70 FR 69942 (November 18, 2005) ("Preliminary Results"), as identified below, and we will correct those errors for these final results. We recommend that you approve the positions that we have developed in the "Discussion of the Issues" section of this memorandum. Below is the list of the issues for which we received comments and rebuttal comments by parties in these reviews, as well as additional ministerial errors that we have discovered in the course of our analysis of the preliminary results calculation:

1. Use of Intermediate Input Methodology
2. Valuation of Garlic Bulb
3. Calculation of Surrogate Wage Rate
4. Double Counting of Selling Expenses, Profits, Land Cost, Packing or Processing Costs
5. By-Products
6. Valuation of Foreign Brokerage and Handling
7. Valuation of Ocean Freight
8. Valuation of Cartons

9. Valuation of Jars
10. Financial Ratios
11. Sunny's Observed Labor Hours at on-site Verification
12. FHTK's Observed Labor Hours at on-site Verification
13. Trans-High's Observed Labor Hours at on-site Verification
14. Yield-Loss Ratio for Shanyang
15. Yield-Loss Ratio to Processing Inputs for FHTK
16. Water and Electricity – FHTK
17. Clerical Error – Valuation of Cartons for Shanyang
18. Clerical Error – Shanyang's Plastic Jars and Lids
19. Exchange Rate Application-FHTK
20. Clerical Error – Linshu Dading Select Gross Unit Prices
21. Clerical Error – Bulb Freight for Sunny and Qingyuan
22. Clerical Error – Calculation of Electricity for Qingyuan
23. Clerical Error - Normal Value Calculation for Dong Yun
24. Clerical Error – FOPs for Direct and Indirect Labor – FHTK

## **Background**

On November 18, 2005, the Department published the Preliminary Results. We invited parties to comment on our Preliminary Results. We received comments from the petitioners<sup>1</sup> and 11 respondents: Jinxiang Dong Yun Freezing Storage Co., Ltd. (“Dong Yun”), Fook Huat Tong Kee Pte., Ltd. (“FHTK”), Zhengzhou Harmoni Spice Co., Ltd. (“Harmoni”), Linshu Dading Private Agricultural Products Co., Ltd. (“Linshu Dading”), Sunny Import & Export Limited (“Sunny”), Taian Ziyang Food Co., Ltd. (“Ziyang”), Jinan Yipin Corporation, Ltd. (“Jinan Yipin”), Jining Trans-High Trading Co., Ltd. (“Trans-High”), Weifang Shennong Foodstuff Co., Ltd. (“WSFC”), Jinxiang Shanyang Freezing and Storage Co., Ltd. (“Shanyang”), and Shanghai LJ International Trading Co., Ltd. (“Shanghai LJ”).<sup>2</sup>

In the previous administrative review, several concerns were raised with respect to the PRC respondents’ reported growing and harvesting-related factors of production (“FOPs”). To address these concerns, the Department issued a series of supplemental questionnaires to all respondents in the instant segments of this proceeding, both to those companies that were

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<sup>1</sup> The petitioners are the Fresh Garlic Producers Association (“FGPA”) and its individual members. The individual members of the FGPA are Christopher Ranch L.L.C., The Garlic Company, Valley Garlic, and Vessey and Company, Inc.

<sup>2</sup> Huaiyang Hongda Dehydrated Vegetable Company (“Hongda”), Zhangqiu Qingyuan Vegetable Co., Ltd. (“Qingyuan”), and Shanghai LJ International Trading Co., Ltd (“Shanghai LJ”) did not submit comments after the Preliminary Results.

verified during the course of these reviews and those that were not.<sup>3</sup> In response to those questionnaires, and based on information gathered at verification, the Department determined that the books and records maintained by the respondents do not report or account for all of the relevant information and do not allow the respondents to identify and fully report the consumption values of all of the FOPs necessary to grow and harvest garlic. Further, the respondents' books and records (e.g., inventory ledgers) do not allow us or the respondents themselves to derive complete and accurate factor usage rates, which are necessary to the non-market economy (NME) calculation methodology for normal value. The Department concluded that this insufficient record keeping was not the result of any individual respondents' unique failure to keep complete and accurate records, but was the result of an industry-wide acceptance of less-specific reporting standards. Thus, in these reviews, in order to eliminate the distortions in our calculation of normal value, we applied an "intermediate-product valuation methodology" to all companies in the Preliminary Results. Using this methodology, we calculated normal value by starting with a surrogate value for the garlic bulb (i.e., the "intermediate product"), adjusted for yield losses during the processing stages, and adding the respondents' processing costs, which were calculated using their reported usage rates for processing fresh garlic.<sup>4</sup>

## **Discussion of the Issues**

### **Use of Intermediate Input Methodology<sup>5</sup>**

**Comment 1:** The petitioners assert that the administrative records of these current reviews support the Department's decision to calculate normal value using the intermediate input methodology, which the petitioners had advocated in past segments of this proceeding. The

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<sup>3</sup> In May and June 2005, the Department conducted a harvest verification of six companies (i.e., Ziyang,, FHTK, Trans-High, Hongda, Sunny, and Shanghai LJ) See Memoranda from Jennifer Moats to the File entitled, "Harvest Verification of Taian Ziyang Food Company, Ltd. in the 2003/2004 Administrative Review of Fresh Garlic from the People's Republic of China" ("Ziyang Verification Report"), "Harvest Verification of Taian Fook Huat Tong Kee Foodstuffs Co., Ltd. in the 2003/2004 Administrative Review of Fresh Garlic from the People's Republic of China" ("FHTK Verification Report"), and "Harvest Verification of Jining Trans-High Trading Company, Ltd. in the 2003/2004 Administrative Review of Fresh Garlic from the People's Republic of China" ("Trans High Verification Report"), all dated November 9, 2005; and Memoranda from Katharine Huang to the File entitled, "Harvest Verification of Huaiyang Hongda Dehydrated Vegetable Co., Ltd. in the 2003/2004 Administrative Review of Fresh Garlic from the People's Republic of China" ("Hongda Verification Report"), "Harvest Verification of Sunny Import and Export Co., Ltd. in the 2003/2004 Administrative Review of Fresh Garlic from the People's Republic of China" ("Sunny Verification Report"), and "Harvest Verification of Henan Xiang Cheng Sunny (San Li) Foodstuff Factory, the Supplier of Shanghai LJ International Trading Co., Ltd Co., Ltd. in the 2003/2004 New Shipper Review of Fresh Garlic from the People's Republic of China" ("Shanghai LJ Verification Report"), all dated November 10, 2005.

<sup>4</sup> See Memorandum to the File entitled, "2003-2004 Administrative and New Shipper Reviews of the Antidumping Duty Order on Fresh Garlic From the People's Republic of China: Intermediate Input Methodology," dated November 10, 2005 ("Intermediate Product Memorandum").

<sup>5</sup> Hongda and Qingyuan did not comment on the Department's use of the intermediate input methodology in the Preliminary Results. Although WSFC did not speak directly to this issue, it did state in its case brief that it is in agreement with the positions taken by the Department in the Preliminary Results.

petitioners urge the Department to continue using this methodology for purposes of these final results.

Linshu Dading, Sunny, Harmoni, Jinan Yipin, and Shanyang (collectively “GDLSK respondents”), and FHTK, assert that the use of the intermediate input methodology is unsupported by the Tariff Act of 1930, as amended (“the Act”), and the Department’s past practice. These respondents contend that the facts surrounding the three cases cited by the Department in the Intermediate Product Memorandum do not support the use of the intermediate input methodology.<sup>6</sup> For example, FHTK argues that PVA actually supports the valuation of the upstream inputs – rather than valuing the intermediate input – in situations where the respondent self-produced the input in question. FHTK further contends that Fish Fillets only identified two exceptions to situations where the Department would calculate normal value using a respondent’s reported FOPs and that the Department improperly reinterpreted Fish Fillets to include a third exception.<sup>7</sup> Specifically, FHTK takes issue with the following statement from the Intermediate Product Memorandum:

In other situations, after a careful consideration of the record, the Department determined that if valuing the intermediate input for the production of subject merchandise will lead to a more accurate result than valuing the individual FOPs, the Department will use an intermediate-product valuation methodology.<sup>8</sup>

FHTK asserts that this statement is based on a subjective standard in that the Department would only have to demonstrate that the intermediate input methodology is more accurate than valuing the individual FOPs, rather than having to demonstrate that the respondent’s FOPs “...would lead to an inaccurate result because a significant element of cost would not be adequately accounted for in the overall factors buildup,” as the Department articulated in Hot-Rolled Steel.

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<sup>6</sup> See Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China, 68 FR 4753 (August 11, 2003), and accompanying Issues and Decision Memorandum at Comment 1 (“PVA”) (which cites Certain Preserved Mushrooms from the People's Republic of China: Final Results of First New Shipper Review and First Antidumping Duty Administrative Review, 66 FR 31204 (June 11, 2001), and accompanying Issues and Decision Memorandum at Comment 2 (“Mushrooms”)); Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 68 FR 37116 (June 23, 2003) (“Fish Fillets”).

<sup>7</sup> As part of its argument, FHTK cites a court remand in which the Department articulated these two exceptions as being: 1) where a respondent reports factors used to produce an intermediate input that accounts for a small or insignificant share of total output, and the increased accuracy in our overall calculations that would result from valuing each of those factors may be so small so as not to justify the burden of doing so; and 2) where it is clear that attempting to value the factors used in a production process yielding an intermediate product would lead to an inaccurate result because a significant element of cost would not be adequately accounted for in the overall factors buildup. See Final Results of Redetermination Pursuant to Court Remand: Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China, 358 F. Supp 2d 1236 (CIT 2004) (“Hot-Rolled Steel”), found at <<http://ia.ita.doc.gov>>.

<sup>8</sup> See Intermediate Product Memorandum at 2.

The GDLSK respondents and Ziyang contend that in all three cases cited by the Department in the Intermediate Product Memorandum – PVA, Mushrooms, and Fish Fillets – the intermediate input methodology was used to value an input that was a component of the subject merchandise and not the subject merchandise itself. In contrast to these three cases, argue the GDLSK respondents, the Department selected a surrogate value for fresh garlic – which is included in the scope of these reviews – to value the intermediate product. The GDLSK respondents assert that because the Department has determined the respondents’ reported upstream FOPs used in manufacturing the raw garlic bulb to be unreliable, section 773(c)(2) of the Act instructs the Department to base normal value on third-country prices, which they contend is exactly what the Department used in the Preliminary Results (i.e., the Department valued the finished product rather than the intermediate product). However, the GDLSK respondents and Ziyang contend that the Department has improperly inflated normal value by then adding to this surrogate value their reported individual costs for yield loss, processing, factory overhead, selling, general, and administrative (“SG&A”) expenses, profit, and packing.

Contrary to the Department’s findings, as articulated in the Intermediate Product Memorandum, Ziyang, FHTK, and Dong Yun argue that their reported FOPs are accurate and capture all relevant costs. Ziyang asserts that the Department did not identify any deficiencies in any of Ziyang’s questionnaire responses with regard to its reported FOP data, that it was fully responsive to every request made by the Department, and that it provided information in response to the Department’s questionnaires to the best of its ability. In addition, Ziyang points to a declaration on the record made by Dr. Ronald Voss – whom Ziyang identifies as an industry expert – in which Dr. Voss reviewed Ziyang’s reported FOPs and attested to their plausibility and credibility. In contrast to this declaration, Ziyang states that the Department, not having its own expertise in the area of garlic-growing operations, did not cite to any authority knowledgeable in this area that supports its decision made in the Preliminary Results. FHTK, on the other hand, insists that it is not only capable of reporting complete and accurate upstream FOPs, but has done so in these and prior reviews. FHTK further argues that its total labor hours reported to the Department are complete and accurate both from a production standpoint as well as from an accounting standpoint but, because harvesting garlic “...is a fluid process in which the elements dictate when the garlic is optimally ripe for harvest,” individual harvesting steps overlap and, accordingly, it is not practicable or necessary to separately record and maintain records of such labor activities. Finally, Dong Yun argues that the Department has found its reported FOP data to be sufficient – and has verified its data – in every prior segment of this proceeding in which Dong Yun has participated. Accordingly, asserts Dong Yun, the Department has no basis to determine that its data are insufficient or unverifiable because the Department did not choose to verify Dong Yun’s questionnaire responses during this administrative review.

Several respondents have asserted that various factors that the Department analyzed in its Intermediate Product Memorandum do not apply to them and, accordingly, the Department should use their reported upstream FOPs rather than using the intermediate input methodology. With regard to labor hours, for example, FHTK states that it explained to the Department during the course of verification that all labor hours used to produce fresh garlic were captured in its accounting records kept in the ordinary course of business, and that the procedures to time

various labor activities that were carried out by the Department during verification did not reveal any new information to discredit its reported labor hours with respect to its digging activities. FHTK further argues that, despite its allocation of labor hours reported to the Department, its reported hours were verified by the Department. Thus, FHTK contends that the record contains no evidence to suggest that it under-reported its labor hours, and that the Department should use these reported hours in its normal value calculations for the final results. Finally, FHTK argues that the Department cannot legally reject all of a respondent's upstream FOPs on the basis that the respondent under-reported its labor hours in its questionnaire responses because the Department has successfully verified several other upstream FOPs in past segments to this proceeding (e.g., garlic seed, fertilizer, PE film, irrigation water, and diesel fuel).<sup>9</sup> Instead, suggests FHTK, the Department should apply facts otherwise available to remedy discrepancies or instances in which it cannot verify a respondent's reported labor hours.<sup>10</sup> Similarly, Trans-High argues that it did not under-report its labor hours to the Department and, consequently, the Department should calculate Trans-High's normal value using its reported labor FOPs.<sup>11</sup>

With respect to yield loss, Trans-High argues that even though the Department determined that the respondents' books and records do not record or substantiate all the points necessary to calculate an accurate yield loss, this issue does not apply to Trans-High. Specifically, Trans-High asserts that the Department confirmed during verification that Trans-High records the weight of the garlic (*i.e.*, used as the denominator for Trans-High's FOPs) after the garlic was trimmed and entered into the cold storage facility. Trans-High argues that it derived its reported FOPs for direct materials, labor, energy, and by-product over the fully processed and packed weight of this garlic. Thus, asserts Trans-High, because this denominator already accounts for all production yield loss that could have occurred, there is no additional yield loss that the Department needs to account for in its normal value calculations. Accordingly, Trans-High reiterates its argument that the Department should not calculate its normal value using the intermediate input methodology but should value all of its reported FOPs in these final results.

Regarding off-season growing activities, Shanghai LJ points to the Intermediate Product Memorandum at Appendix L, in which the Department acknowledges that the land on which Shanghai LJ's garlic was grown is not used to grow any crops during the off-season. Both Shanghai LJ and Trans-High assert that even if residual chemicals remained in the fields used by these respondents to grow garlic, and these respondents were to have benefitted from them, such

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<sup>9</sup> FHTK cites Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review in Part, 68 FR 4758 (January 30, 2003), and Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty New Shipper Reviews, 69 FR 46498 (August 3, 2004), in support of its contention.

<sup>10</sup> FHTK cites Porcelain-on-Steel Cooking Ware from the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 62 FR 32757 (June 17, 1997) as an instance in which the Department has applied facts available to a respondent's reported labor hours.

<sup>11</sup> See Comments 11, 12 and 13, below, for a full discussion of the respondents' arguments concerning the Department's verification of reported labor hours.

inputs are irrelevant to their FOPs and they are not required to report such FOPs in their questionnaire responses because the Act requires the Department to determine the normal value of the subject merchandise on the basis of the value of the FOPs utilized in producing the merchandise (i.e., the “FOP methodology”).<sup>12</sup> Shanghai LJ and Trans-High point to the dictionary definition of “utilize” and assert that the Department’s interpretation of this word in a passive sense (e.g., the use of residual items in a field, sunshine, rainwater, or air) – rather than the active sense of putting something into service – is inappropriate and was not intended by Congress. FHTK, on the other hand, points to its questionnaire responses in which it claimed that any chemical applications (e.g., pesticides), or irrigation water used on its land during the off-season do not affect its production of fresh garlic, and that the land is stripped of any vegetative matter (e.g., remnant plants and seeds) prior to planting the garlic crop. In its brief, FHTK asserts that there is no evidence on the record of any indirect inputs, or that the off-season production activities of other farmers had any impact on FHTK’s production of garlic. FHTK maintains that any such off-season activities are nothing more than incidental to FHTK’s production of garlic, and that the record is absent any evidence to the contrary because any such indirect inputs are not actually inputs into FHTK’s own production of garlic.

Regarding their estimation of irrigation water consumption, Shanghai LJ and Trans-High assert that the Department not only has accepted this reporting methodology from respondents in prior segments to this proceeding as well as in other antidumping proceedings, but also not explained why this methodology is an unreasonable estimate of their actual water consumption. In addition, both Shanghai LJ and Trans-High assert that they reported the gross weight of the seed purchased/set aside by the respondents as the numerator for their usage rate for garlic seed, and that the Department verified this information. Shanghai LJ and Trans-High, therefore, argue that any concerns raised by the Department that normal value is understated in instances where a respondent reported the net amount of garlic seed used are moot with respect to both Shanghai LJ and Trans-High because this situation does not apply to either respondent.

FHTK argues that the record keeping requirements proposed by the Department in the Preliminary Results are contrary to the Act and the business realities in the PRC, and that they are unreasonably stringent.<sup>13</sup> Reiterating its earlier argument that the Act directs the Department to apply facts available in situations where a respondent refuses or is unable to provide data to the Department, FHTK asserts that the Act does not allow the Department to judge the sufficiency of a respondent’s accounting records or to dictate the types of records a respondent must keep. FHTK cites two court cases which it believes support its contention that the Department may not penalize respondents for not providing information that does not exist or is not kept in the ordinary course of business.<sup>14</sup> Citing the Department’s Antidumping Manual,

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<sup>12</sup> In accordance with sections 773(c)(1), 773(c)(3), and 773(c)(4) of the Act, and 19 CFR 351.408(c).

<sup>13</sup> See Intermediate Product Memorandum at 11-12.

<sup>14</sup> See Olympic Adhesives, Inc. v. United States, 899 F.2d 1565, 1573 (Fed. Cir. 1990), and Atlantic Sugar, Ltd., v. United States, 744 F.2d 1556 (Fed. Cir. 1994).

FHTK admonishes the Department to be reasonable and flexible in its record keeping requirements with respect to garlic respondents in the PRC.<sup>15</sup> FHTK also argues that even if it were to begin maintaining the types of records suggested by the Department in the Intermediate Product Memorandum, such records will have been created solely for participation in an antidumping proceeding and will not be authentic records kept in the ordinary course of business. Beyond the legal and procedural issues summarized above, FHTK also takes issue with having to report all material factors used on the land during the off-season because it does not have access to such information or maintain such records. With regard to labor records, FHTK asserts that it is unreasonable and impracticable to record and maintain hourly labor records for each stage and sub-stage of production because of the size of the land being cultivated and the number of laborers involved, and that the short amount of time under which the farmers have to perform various farming activities makes it financially unsound to track labor at such a level of detail. In short, FHTK contends that the Department has not rejected respondents' upstream FOP data in prior segments to this proceeding, and the level of detail suggested by the Department with regard to respondents' record keeping goes beyond what is commercially necessary, and unnecessarily complicates the calculation of normal value without improving its accuracy in any way.

Finally, Shanghai LJ and Trans-High assert that the Department may only depart from the FOP methodology – which it used in past segments of this proceeding – if it clearly states the grounds for such departure so that a reviewing court can understand the basis for the Department's decision. They state the Department has not done this in this case. Additionally, both respondents insist that the Department may not unilaterally alter its normal value calculation methodology and, should the results of such methodology result in a positive antidumping margin for Shanghai LJ or Trans-High, the Department may not retroactively assess duties on entries of the subject merchandise because both respondents set their U.S. sales prices in an effort to avoid dumping by relying on the FOP methodology used by the Department in all past segments of this proceeding.<sup>16</sup>

The petitioners disagree with the respondents' claims that the use of the intermediate input methodology is unsupported by the Act and the Department's past practice. The petitioners maintain that using this methodology is in line with section 773(c)(1)(B) of the Act in that it is a form of calculating normal value by valuing FOPs and argue that, contrary to claims made by the GDLSK respondents, the use of this methodology is not an application of section 773(c)(2), which provides an exception to valuing FOPs for purposes of determining normal value. The petitioners insist that the exception provided for under section 773(c)(2) of the Act has nothing to

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<sup>15</sup> See Import Administration Antidumping Manual: Training/Operating Guide, January 22, 1998, at chapter 13, pages 2 and 54, available on the Import Administration website at <<http://ia.ita.doc.gov>>, which states that analysts should expect the unexpected and be flexible at verification, and that although a questionnaire response reports per-unit labor FOPs, a respondent's labor accounting will normally not track labor in the same manner.

<sup>16</sup> Underlying the arguments for both Shanghai LJ and Trans-High is the claim that if the Department were to continue using the FOP methodology, it would not calculate a positive margin for either respondent.

do with the intermediate input methodology. Further, the petitioners take issue with the assertions made by the GDLSK respondents and Ziyang that the Department improperly inflated the surrogate value for the garlic bulb by adding on respondents' costs (e.g., processing, packing, etc.), arguing such allegations center around what constitutes the most appropriate surrogate value, not whether the use of the intermediate input methodology is appropriate. As such, the petitioners argue that the respondents have confused the issue of whether the intermediate input methodology is appropriate – the focus of which is whether it achieves a more accurate and legally defensible result – by arguing that the intermediate input is itself within the scope of the merchandise under review, which is more properly addressed by the Department's choice of surrogate value with which to value the garlic bulb.

Regarding the respondents' assertions that the cases cited by the Department in the Intermediate Product Memorandum do not support the use of the intermediate input methodology, the petitioners argue that the use of this methodology in these reviews is fully consistent with past precedent, and that the Department is the most appropriate interpreter of its past practice. Specifically with regard to Fish Fillets, the petitioners counter the arguments made by FHTK, insisting that the Department is simply restating the second exception that it articulated in Hot-Rolled Steel rather than reinterpreting Fish Fillets to create a third exception. The petitioners argue that in Mushrooms and Fish Fillets, contrary to arguments made by the respondents, the Department valued the intermediate input (i.e., fresh mushrooms and whole fish, respectively) rather than the upstream FOPs because it determined that this approach would produce more accurate results. In this case, argue the petitioners, the Department valued the intermediate product (i.e., the raw garlic bulb) in the Preliminary Results for the same reason – that it is an FOP that can be identified, quantified, and valued with a greater degree of precision than the various upstream inputs used to grow it.

Regarding the arguments made by several respondents that the various factors analyzed by the Department in the Intermediate Product Memorandum do not apply to them, the petitioners counter that the Department's choice of applying the intermediate input methodology to all respondents in these reviews has nothing to do with the reliability of a respondent's individual FOPs. Rather, assert the petitioners, the Department has the discretion to apply the methodology that it believes is the most accurate overall to all respondents. In response to FHTK's claim that its upstream FOPs are "easily measured..., easily tracked..., and easily verified," the petitioners point out that the Department's findings to the contrary are fully supported by information on the record and discussed in the Intermediate Product Memorandum, in that the Department has found the production of fresh garlic to be a complicated process that is not subject to uniform record keeping and is difficult to verify using traditional verification techniques. In response to arguments made by FHTK, Shanghai LJ, and Trans-High regarding off-season and unknown activities, the petitioners counter that activities such as the application of various chemicals, crop rotation, and the planting of crops that replenish the soil's nitrogen level, do impact crop yield rates, and because respondents cannot track such activities, the Department, in part, opted to use the intermediate input methodology, thereby obviating the need for the respondents to account for such activities. Therefore, assert the petitioners, the respondents' arguments regarding having

to report inputs related to off-season activities to the Department are irrelevant under the intermediate input methodology.

Synthesizing FHTK's arguments regarding the reliability of its reported FOPs with its assertions that the record keeping requirements proposed by the Department are unfair and contrary to the Act and business realities in the PRC, the petitioners point to FHTK's own statements that harvesting garlic is a fluid process, which they believe contradict FHTK's earlier assertions that it records complete and accurate labor consumption from an accounting standpoint. The petitioners also refer to the Department's harvest verifications, during which it found during on-site monitoring of the harvesting process that it is not possible to verify the accuracy of the respondents' reported labor FOPs because of, in part, the lack of uniform record keeping. Contrary to FHTK's assertions, the petitioners believe that the Department is not judging the sufficiency of the respondents' accounting records or dictating the types of records that respondents must keep. Rather, the petitioners assert that the Department selected a calculation methodology that it confidently believes will accurately value the respondents' FOPs. The petitioners also point out that by using the intermediate input methodology, respondents would not need to maintain their books and records in any particular format.<sup>17</sup>

In response to FHTK's suggestion that the Department should apply facts otherwise available to remedy discrepancies or instances in which it cannot verify a respondent's reported labor hours, the petitioners caution that the application of the intermediate input methodology should not be confused with the application of facts available. The petitioners argue that the Department's decision to use the intermediate input methodology was not penalizing the respondents due to lack of cooperation, nor is it attempting to fill in gaps of missing information. Rather, the petitioners contend that the Department chose this calculation methodology in an effort to achieve accurate dumping margins using verified data.

In response to the arguments raised by Shanghai LJ and Trans-High that the Department may not apply a new calculation methodology retroactively when they relied on the FOP methodology to set their U.S. prices, the petitioners point to the Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 34082 (June 13, 2005), and accompanying Issues and Decision Memorandum (9<sup>th</sup> AR Final Results), in which the Department announced that it intended to revisit this issue in the context of these current reviews, which constitutes clear and timely notice of a potential change in calculation methodologies.<sup>18</sup> In summary, the petitioners argue that if the respondents relied on the FOP methodology to set their prices – which they believe has not been demonstrated – it was not reasonable for the respondents to have done so given the Department's notification of a possible methodological change in the 9<sup>th</sup> AR Final Results.

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<sup>17</sup> Thereby implying that the record keeping and reporting burden on respondents would, thus, be less rather than greater.

<sup>18</sup> See 9<sup>th</sup> AR Final Results at Comment 1.

Finally, several parties raised the following arguments pertaining to various issues, in addition to those summarized above, that the Department should consider if it continues to apply the intermediate input methodology in these final results. These arguments are more appropriately addressed elsewhere in this memorandum:

- Whether the Department should select a different source to value the garlic bulb (i.e., the intermediate product) (See Comment 2);
- Whether the Department should select a surrogate country other than India (See Comment 8);
- Whether the Department should grant an offset to normal value for the sale of the respondents' reported by-products (See Comment 9);
- Whether the Department should remove selling expenses and profit from the garlic bulb surrogate value (See Comment 10); and
- Whether the Department made clerical errors in its verification reports regarding certain respondents' reported and observed labor FOPs, and whether the Department misinterpreted these data leading to its decision in the Intermediate Product Memorandum (See Comment 11).

**Department's Position:** We continue to believe that the use of the intermediate input methodology is appropriate for these final results. In the course of this review proceeding, the Department requested and obtained a vast amount of detailed information from the respondents with respect to each company's garlic production practices. Based on our analysis of the information on the record and for the reasons outlined in the Intermediate Product Memorandum, we determined that the respondents are unable to accurately record and substantiate the complete costs of growing garlic.

Specifically, we found that the respondents in this industry do not track actual labor hours incurred for growing, tending, and harvesting activities and, thus, do not maintain appropriate records which would allow them to quantify, report and substantiate this information. Second, we found significant problems with respondents' ability to report yield loss that results from the shrinkage that occurs during the production of garlic due to the loss of water weight and the discarding of roots, stems, and skins during processing. We also noted that there are many unknown variables that may affect or influence reported FOPs which are not accounted for in the respondents' books and records. For example, the respondents lease the land on which the garlic is grown, and most respondents report no specific or detailed knowledge of either the off-season crops produced on such leased land, crops produced on this leased land concurrently with the garlic, or the impact that residual inputs (e.g., nutrients, pesticide, herbicide, water) may have on their garlic crops. Further, we found that the respondents also differed significantly in how each reported its garlic seed usage. Finally, we determined that the books and records maintained by the respondents do not report or account for all of the relevant information and do not allow the respondents to identify all of the FOPs necessary to grow and harvest garlic, which significantly inhibits the Department's ability to conduct a meaningful verification of reported information.

We cited Fish Fillets and Mushrooms in the Intermediate Product Memorandum in order to illustrate the fact that there have been past cases brought before the Department in which we deviated from our standard practice of valuing self-produced upstream FOPs in order to achieve a more accurate result. Such cases are consistent with and fully support the use of the intermediate input methodology. As noted above, we articulated two exceptions in Hot-Rolled Steel as situations where the Department would calculate normal value using a respondent's reported FOPs, citing the analysis conducted in Fish Fillets.<sup>19</sup> In Fish Fillets, we explained that under the first exception a respondent might report a factor used to produce an intermediate input that accounts for a small or insignificant share of total output. Under such a scenario, the increased accuracy in our overall calculations that would result from valuing a factor may be so small so as not to justify the burden of doing so. Under the second exception, we explained in Hot-Rolled Steel that there are situations where it is clear that attempting to value the factors used in a production process yielding an intermediate product "would lead to an inaccurate result because a significant element of cost would not be adequately accounted for in the overall factors buildup."<sup>20</sup> In the Intermediate Product Memorandum, we cited Fish Fillets in support of the following statement:

In other situations, after a careful consideration of the record, the Department determined that if valuing the intermediate input for the production of subject merchandise will lead to a more accurate result than valuing the individual FOPs, the Department will use an intermediate-product valuation methodology.<sup>21</sup>

FHTK claims that by making this statement we have reinterpreted Fish Fillets to create a third exception to situations in which it will use the FOP methodology. However, we disagree with FHTK's conclusion. Contrary to FHTK's claim, we are simply restating the second exception described in Hot-Rolled Steel, and not creating an additional exception. In the Intermediate Product Memorandum, we detailed our analysis which led us to the conclusion in this case that there are likely to be significant portions of normal value that would be understated or otherwise cannot be accurately accounted for if we were to use the FOP methodology used in prior reviews pursuant to section 773(c)(1) of the Act. Therefore, we find no difference between stating that using the intermediate input methodology "will lead to a more accurate result" in the Intermediate Product Memorandum and stating that using the FOP methodology "would lead to an inaccurate result because a significant element of cost would not be adequately accounted for in the overall factors buildup" in Fish Fillets, because the statements are simply the inverse of each other and the factual information on the record of these reviews equally supports both statements. Accordingly, we continue to find that our analysis in Hot-Rolled Steel and Fish

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<sup>19</sup> See Hot-Rolled Steel at 8. See also Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 68 FR 4986, 4993 (January 31, 2003) ("Fish Fillets Prelim").

<sup>20</sup> See Hot-Rolled Steel at 8.

<sup>21</sup> See Intermediate Product Memorandum at 2.

Filletts supports the determination we made in the Preliminary Results that application of the intermediate input methodology is appropriate for this case.

Similarly, with regard to PVA, we cited this case in the Intermediate Product Memorandum as another example in which we valued the intermediate input directly, for reasons other than those articulated in Hot-Rolled Steel and Fish Fillets. As quoted by FHTK, we stated that, in accordance with our practice, we value the upstream inputs, rather than the intermediate product, for those inputs that the respondent self-produces. Because we determined that the respondent in that case did not self-produce the acetic acid, we valued acetic acid (*i.e.*, the intermediate input) directly.<sup>22</sup> At issue in PVA was the Department's "self-produced input rule." Unlike the issues of concern in Fish Fillets, the issue at hand in PVA was not whether it was more accurate to value the intermediate input in lieu of the upstream inputs used in producing that intermediate input. Rather, the issue in PVA focused on whether the Department should value the upstream inputs where the respondent did not self-produce the factor input,<sup>23</sup> which is unrelated to the issue at hand in these reviews where the respondent self-produces the intermediate input but cannot substantiate the actual consumption rate of those inputs. Thus, FHTK's reliance on our analysis in PVA is misplaced.

The GDLSK respondents and Ziyang have contended that the intermediate product in this case (*i.e.*, the raw garlic bulb) is subject merchandise, unlike the case in Mushrooms or Fish Fillets, and have argued that an intermediate input methodology is therefore impermissible in this case. The scope of this antidumping duty order covers merchandise "subject" to the antidumping duty order.<sup>24</sup> This means that the following products which are imported into the United States are subject to this administrative review:

all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing.

It is important to distinguish the fact that the raw garlic bulb that is harvested from the ground, however, is not immediately shipped to the United States. Rather, the garlic that PRC exporters ship to the United States requires at least a minimum amount of processing and packing prior to export. We have learned through the conduct of several administrative and new shipper reviews that the garlic harvested from the ground is, at a minimum, cleaned to remove the outer skins in order to give the garlic bulb its characteristic white, fresh appearance. This whole bulb garlic is then typically packed in mesh bags and cartons for shipment to the United States. In the case of peeled garlic, the processing is more extensive and typically involves additional labor, energy, and several packing inputs (including the use of an antiseptic solution and nitrogen gas). Based

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<sup>22</sup> See PVA at Comment 1.

<sup>23</sup> See PVA at Comment 1.

<sup>24</sup> See sections 735(b)(1) and 736(a) of the Act (explaining that the antidumping order covers "imports").

on our experience in conducting these reviews, we incorporated these specific processing and packing inputs into our standard questionnaire.<sup>25</sup> Therefore, despite the contentions raised by the GDLSK respondents and Ziyang, the garlic that is pulled from the ground is not the final product that is exported to the United States. Thus, consistent with Mushrooms and Fish Fillets, we valued the intermediate product in these reviews rather than respondents' reported upstream FOPs that go into producing that intermediate input.

We also disagree with the contentions raised by the GDLSK respondents that we relied on section 773(c)(2) of the Act to calculate normal value. Rather, using the intermediate input methodology, as we did in these reviews and in Mushrooms and Fish Fillets, is consistent with section 773(c)(1)(B) of the Act because we valued the respondents' reported FOPs. The intermediate input methodology merely allows the Department to value the intermediate product (in this case the raw garlic bulb) in lieu of valuing the upstream inputs used to produce that intermediate product. Valuing the intermediate input in this way constitutes the "best available information," in accordance with section 773(c)(1)(B) of the Act. Accordingly, we calculated normal value in these reviews by starting with the value of the intermediate product, and then adding to this value the respondents' processing and packing costs, adjusted for processing yield loss and in so doing, relied on the processing and packing FOPs, and yield loss figures, as reported by the respondents. Thus, our calculation of normal value is in accordance with section 773(c)(1)(B) of the Act. We did not cite section 773(c)(2) of the Act in the Preliminary Results because we did not rely on this part of the Act as justification for using the intermediate input methodology. We agree with the GDLSK respondents and Ziyang, however, that the surrogate value we use to value the intermediate input could result in double-counting of their reported costs for yield loss, processing, factory overhead, SG&A expenses, profit, and packing if we do not adjust the calculation appropriately. However, the appropriateness of these arguments is directly related to the surrogate value actually used to value the intermediate input, not to the question of whether or not this calculation methodology is appropriate. Accordingly, we discuss all issues related to the appropriate surrogate value for the garlic bulb under Comment 2, below, and the issue of potential double-counting of certain expenses under Comment 4, below.

As noted above, the Department conducted a thorough analysis of each respondent's reported FOPs and attached to the Intermediate Product Memorandum company-specific appendices citing to each instance in which the respondent's respective questionnaire responses and verification reports support our determination. As discussed above, Ziyang, FHTK, and Dong Yun argue that their reported FOPs are accurate and capture all relevant costs. Additionally, FHTK, Trans-High, and Shanghai LJ have argued that because certain issues that we raised in the Intermediate Product Memorandum do not apply to them, we should calculate their normal value using their reported upstream inputs rather than using the intermediate input methodology. We disagree with the respondents, and address each company's comments below. Due to the complexity of our yield loss analysis, we are attaching to this memorandum a detailed discussion of yield loss, in which we explain its importance to the normal value calculations and provide a

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<sup>25</sup> See original antidumping questionnaire, issued to all parties in these reviews, dated January 3, 2005, at Appendix VI ("Case Specific Questions and Modifications").

narrative illustration of a hypothetical yield loss calculation.<sup>26</sup> For those respondents identified above that argued that we should use their reported upstream FOPs in lieu of the intermediate input methodology, we refer to this attachment when discussing their reported yield loss figures.

### Ziyang

Record evidence in this review refutes Ziyang's arguments that its reported FOPs are accurate and complete. We conducted a thorough analysis of its reported FOPs and cited each instance in the Intermediate Product Memorandum in which its respective questionnaire responses, and the verification report, support our determination. With regard to its reported labor hours, we determined that "Ziyang's labor records did not record the number of hours worked. Rather, they merely reported that the workers attended work each day." Additionally, we found that Ziyang does not reflect the time worked by spouses and other relatives not recorded in the books who help the laborers identified in its books.<sup>27</sup>

With regard to yield loss, we determined that Ziyang's yield loss calculation is understated. Specifically, Ziyang used the weight of the harvested garlic, after the roots were trimmed, as the denominator for its pre-processing FOPs (i.e., point "a" in the hypothetical example found in Attachment 1). Ziyang calculated yield loss as the difference between the production quantity received by Ziyang at its processing center (i.e., points "h" and "i" in the hypothetical example found in Attachment 1) and the quantity of packed fresh garlic (i.e., points "m" and "p" in the hypothetical example found in Attachment 1).<sup>28</sup> Although these data allow us to calculate an accurate processing yield loss for Ziyang's production of fresh and peeled garlic, Ziyang does not record the weight at the earlier stages which is necessary to derive accurate yield loss figures for loss that occurred during dry storage and cold storage. As we stated in the Intermediate Product Memorandum, "any loss incurred between the point where the product enters dry storage and when it is withdrawn from inventory is not captured. Accordingly, its yield loss is understated."<sup>29</sup> Therefore, as demonstrated above, we do not have the information necessary to accurately capture yield loss in Ziyang's margin calculations. Ziyang has not disputed this finding in this proceeding.

Additionally, we noted in the Intermediate Product Memorandum that Ziyang's garlic seed FOP does not capture the full consumption value, and that Ziyang cannot assess the impact of off-season crop activities on its yield quantity or the quality of its garlic.<sup>30</sup> Ziyang has not disputed

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<sup>26</sup> See Attachment 1 to this memorandum.

<sup>27</sup> See Intermediate Product Memorandum, at the "Labor" section of Appendix I.

<sup>28</sup> See Intermediate Product Memorandum, at the "Yield Loss" section of Appendix I.

<sup>29</sup> See Intermediate Product Memorandum, at the "Yield Loss" section of Appendix I.

<sup>30</sup> See Intermediate Product Memorandum, at Appendix I.

these findings in this proceeding. Thus, in light of all the reasons identified above, we continue to find that it is appropriate to calculate Ziyang's normal value using the intermediate input methodology.

### FHTK

With regard to FHTK's arguments that it did not under-report its harvesting labor hours for digging activities and that our verification findings did not reveal any new information to discredit its reported labor FOPs (which we address below in Comment 11), we do not agree. Record evidence clearly demonstrates that FHTK did not calculate its labor hours based on actual hours worked.<sup>31</sup>

Furthermore, with respect to yield loss, we determined that FHTK's yield loss calculation is understated. Specifically, FHTK used the weight of the harvested garlic, after the roots were trimmed, as the denominator for its pre-processing FOPs (*i.e.*, point "c" in the hypothetical example found in Attachment 1). FHTK also weighs the garlic before it enters the cold storage units (*i.e.*, point "e" in the hypothetical example found in Attachment 1), after the garlic is withdrawn from the warehouse, but before processing (*i.e.*, points "h" and "i" in the hypothetical example found in Attachment 1), after the garlic is processed (*i.e.*, points "m" and "p" in the hypothetical example found in Attachment 1), and before any unused portion of garlic is returned to the warehouse after processing.<sup>32</sup> Although these data allow us to calculate an accurate processing yield loss for its production of fresh and peeled garlic, FHTK does not record the weight at the earlier stages. These data are necessary to derive accurate yield loss figures for loss that occurred during storage. Therefore, we do not have the information necessary to accurately capture yield loss in FHTK's margin calculations, and FHTK has not disputed this finding in this proceeding.

Additionally, with regard to its garlic seed FOP, FHTK cannot identify how much of its previous harvest was actually retained as seed.<sup>33</sup> FHTK has not disputed this finding in this proceeding. Finally, even though FHTK stated that it knew a pesticide mist was used for off-season corn crops grown by another company, it reported that it did not have detailed knowledge of, or control over, this other company's production activities or the exact timing of this pesticide mist application.<sup>34</sup> Thus, in light of all the reasons identified above, we continue to find that it is appropriate to calculate FHTK's normal value using the intermediate input methodology.

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<sup>31</sup> See Intermediate Product Memorandum, at Appendix A, and Department Position to Comment 11, below.

<sup>32</sup> See Intermediate Product Memorandum, at the "Yield Loss" section of Appendix A.

<sup>33</sup> See Intermediate Product Memorandum, at the "Garlic Seed" section of Appendix A.

<sup>34</sup> See Intermediate Product Memorandum, at Appendix A. See also FHTK's questionnaire response, dated June 22, 2005, at 19-21.

## Dong Yun

Record evidence refutes Dong Yun's arguments that the Department has no basis to determine that its data is insufficient or unverifiable because the Department did not choose to verify Dong Yun's questionnaire responses during this administrative review. First, record evidence clearly demonstrates that Dong Yun does not record the actual labor hours worked, as explained in detail in the Intermediate Product Memorandum at the "Labor" section of Appendix E and, therefore, has not been able to report accurate labor hours for its farmers in the planting, tending, and harvesting of garlic. Dong Yun has not disputed this finding in this segment of the proceeding. Second, with respect to yield loss, we calculated Dong Yun's processing yield loss for fresh garlic using information provided in its questionnaire responses.<sup>35</sup> Although we can calculate an accurate processing yield loss for its production of fresh and peeled garlic using the data that Dong Yun maintains, it does not record the weight at all of the earlier stages which is necessary to derive accurate yield loss figures for loss that occurred during dry storage and cold storage. Specifically, Dong Yun weighs the "second-quality" bulbs sold in the field (*i.e.*, analogous to point "b" in the hypothetical example found in Attachment 1), and records the weight of the garlic bulbs that are transferred to the dry storage warehouse (*i.e.*, point "c" in the hypothetical example found in Attachment 1).<sup>36</sup> Therefore, we do not have the information necessary to accurately capture yield loss in Dong Yun's margin calculations, and Dong Yun has not disputed this finding in this proceeding.

Furthermore, with regard to garlic seed, Dong Yun's reported garlic seed FOP does not capture the full consumption quantity because it used the weight of the seed when it was pulled from inventory for planting rather than at the time it was reserved from the previous harvest for use as seed.<sup>37</sup> Finally, Dong Yun reported that certain inputs were placed into the soil for the off-season corn crop, and that both the off-season corn crop and the garlic crop share the leased fields for approximately two weeks.<sup>38</sup> Dong Yun has not disputed this finding in this proceeding. Thus, the record clearly demonstrates that Dong Yun's reported upstream inputs used to produce the raw garlic bulb are not accurate. Therefore, regardless of whether we verified Dong Yun's responses, the factual information provided on the record by Dong Yun supports our decision that it is appropriate to calculate Dong Yun's normal value using the intermediate input methodology.

## Trans-High

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<sup>35</sup> See Memorandum to the File entitled, "Analysis for the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Jinxiang Dong Yun Freezing Storage Co., Ltd.," dated November 10, 2005.

<sup>36</sup> See Intermediate Product Memorandum, at the "Yield Loss" section of Appendix E.

<sup>37</sup> See Intermediate Product Memorandum, at the "Garlic Seed" section of Appendix E.

<sup>38</sup> See Intermediate Product Memorandum, at Appendix E.

Trans-High asserts that the yield loss, garlic seed, and labor hour issues, which the Department analyzed with respect to its FOPs as part of its decision to use the intermediate input methodology for all respondents, are moot with respect to Trans-High. However, we do not agree. Notwithstanding its arguments that it did not under-report its labor hours, we identified several other concerns with regard to Trans-High's reported labor hours.<sup>39</sup> Specifically, during the course of verification, Trans-High attempted to revise its reported total labor hours by redistributing a portion of its reported labor hours from activities that we did not observe during verification to the harvesting activities that we did observe. As we stated in the verification report, "{a}lthough this redistribution would not alter the total labor usage rates reported by Trans-High, it could not be verified that these hours were indeed attributable to harvesting and not to another stage of production, or that labor hours from other stages of production were accurately accounted for."<sup>40</sup> This is because Trans-High's attendance records do not reflect the full complement of hours its laborers worked, or indeed the full complement of its laborers (e.g., does not reflect the time worked by spouses and other relatives not recorded in the books who help the identified laborers).<sup>41</sup> Both of these issues (i.e., redistribution of labor hours and whether attendance records reflect actual hours worked by all laborers) highlight our concerns regarding the accuracy of Trans-High's reported labor hour FOPs. As a result of verification, the Department determined that Trans-High does not maintain records that identify its actual labor requirements for planting, growing, and harvesting-related activities.<sup>42</sup>

Further, with respect to yield loss, while we agree with Trans-High that its yield loss figures for fresh garlic are complete, we continue to find that its yield loss figures for peeled garlic are incomplete and do not capture the full yield loss incurred in its production process.<sup>43</sup>

With respect to garlic seed, Trans-High reported its garlic seed consumption based on a "gross" quantity consumed and against a "gross" harvested garlic weight in the denominator of its FOP calculation.<sup>44</sup> Thus, Trans-High's calculation does not capture the actual quantity consumed per kilogram to produce the finished product. Finally, Trans-High stated in one of its questionnaire

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<sup>39</sup> See Comment 11, below, for further discussion of Trans-High's argument that it did not under-report labor hours.

<sup>40</sup> See Intermediate Product Memorandum, at Appendix D.

<sup>41</sup> See Intermediate Product Memorandum, at 4 and the "Labor" section of Appendix D.

<sup>42</sup> See Intermediate Product Memorandum, at the "Labor" section of Appendix D.

<sup>43</sup> Due to the proprietary nature of this issue, see Memorandum to the File entitled, "2003-2004 Administrative and New Shipper Reviews of the Antidumping Duty Order on Fresh Garlic From the People's Republic of China: Yield Loss Analysis for Jining Trans-High Trading Co., Ltd.," dated April 26, 2006 ("Trans-High Yield Loss Memorandum").

<sup>44</sup> See Intermediate Product Memorandum, at the "Yield Loss" section of Appendix D, and the sample yield loss calculation above.

responses that it benefits from residual herbicides and pesticides used during the off-season.<sup>45</sup> Nonetheless, Trans-High did not quantify the benefit derived from such residual chemicals, and it reported zero usage of herbicide and pesticide FOPs in the production of garlic.<sup>46</sup> Thus, in light of all the reasons identified above, we continue to find that it is appropriate to calculate Trans-High's normal value using the intermediate input methodology.

### Shanghai LJ

With regard to Shanghai LJ's arguments, we agree that because the land on which it grows its garlic crops is not used to grow any other crops, the issue of off-season activities does not apply to Shanghai LJ.<sup>47</sup> However, Shanghai LJ's reported information contains a number of deficiencies that it could not remedy. Specifically, Shanghai LJ's reported labor hours cannot be accurately reported to the Department because it does not maintain detailed records of its labor used in the production of garlic. For example, each farmer was paid for eight hours for each day if he/she showed up to work and finished the assignment for the day regardless of the number of hours it took to complete the assigned task (e.g., if one worker took ten hours to finish a day's assignment and another finished the day's assignment in seven hours, both were paid for an eight-hour day).<sup>48</sup> Shanghai LJ has not disputed this finding in this proceeding.

Also of significance with respect to Shanghai LJ's reported FOPs is its inability to capture and report an accurate yield loss. Shanghai LJ stated during verification that it was unable to report actual yield loss because its supplier did not keep any detailed written records of the amount of inventory withdrawn for processing, and that it could not calculate a complete yield loss until its crop for 2003-2004 was fully sold.<sup>49</sup> Therefore, Shanghai LJ cannot weigh the fully processed and packed garlic (i.e., points "m" and "p" in the hypothetical example found in Attachment 1) until the crop is fully sold. Because in this instance the point in time by which the garlic will have been fully sold post-dates a) the POR reporting period, b) the time by which Shanghai LJ responded to the antidumping questionnaire, and c) even the timing of any possible verification, it is impossible for us to capture the full amount of yield loss in Shanghai LJ's normal value calculations. Shanghai LJ has not disputed this finding in this proceeding.

With respect to garlic seed, Shanghai LJ reported its garlic seed consumption based on a "gross" quantity consumed, as noted in the Intermediate Product Memorandum at Appendix L. However, because Shanghai LJ measured this weight against a "gross" harvested garlic weight in

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<sup>45</sup> See questionnaire response, dated May 26, 2005, at 9-10.

<sup>46</sup> See Intermediate Product Memorandum, at Appendix D.

<sup>47</sup> See Intermediate Product Memorandum, at Appendix L.

<sup>48</sup> See Intermediate Product Memorandum, at the "Labor" section of Appendix L.

<sup>49</sup> See Intermediate Product Memorandum, at Appendix L.

the denominator of its calculation rather than against its finished products weight, this reported quantity does not reflect the actual quantity consumed per kilogram to produce the finished product. Thus, despite the fact that the issue of the off-season crop activities does not apply to Shanghai LJ, other issues remain unresolved for Shanghai LJ that support use of the intermediate input methodology with respect to this respondent's normal value calculations.

Although it is correct that certain issues regarding the respondents' reported upstream FOPs into producing the raw garlic bulb do not apply to each and every respondent, as argued by FHTK, Shanghai LJ and Trans-High, we agree with the petitioners that such arguments miss the point of our determination. The focus of our decision was a look at the garlic industry in the PRC and an individual examination of whether each issue of concern was reflected in each respondent's books and records. Thus, where we determined through examination of the questionnaire responses and verification findings that a particular respondent's internal books and records are unable to accurately capture the complete costs of growing garlic, we did not use its reported FOPs because they would not yield an accurate normal value calculation. By applying an intermediate product valuation methodology to such companies, we eliminated the distortions in the calculation of normal value. Accordingly, the issue of whether a particular issue that we examined may not apply to any individual respondent is irrelevant because, as we noted above, the information on the record with respect to FHTK, Shanghai LJ, Trans-High, as well as all other respondents, indicates significant deficiencies in the respondents' reported FOPs for the garlic bulb, warranting the use of the intermediate input methodology for each respondent in these reviews.

Although FHTK has stated opposition to our proposed record keeping requirements, purporting them to be contrary to the Act and the business realities in the PRC, we do not agree that we are creating additional record keeping requirements. The purpose of our detailed analysis of each respondent's reported FOPs, as articulated in the Intermediate Product Memorandum and summarized above, was not to impose additional record keeping requirements on the PRC garlic industry that run contrary to its business realities. Rather, the issue at hand here is whether each respondent can substantiate its reported FOPs with its internal accounting records. Based on the analysis articulated in the Intermediate Product Memorandum and summarized above, we continue to find that in these reviews, the respondents' books and records as currently maintained do not include the level of detail necessary to ensure this accuracy. However, as we stated in the Intermediate Product Memorandum, we will revisit this issue in future reviews and consider whether to use a respondent's reported FOPs in the calculation of normal value if it is able to provide sufficient factual evidence that it maintains the necessary information in its internal books and records that would allow us to establish the completeness and accuracy of such reported FOPs.

We do not agree with FHTK's suggestion that we apply facts available in every case to remedy instances where we cannot verify upstream FOPs into producing the raw garlic bulb. For example, it is generally inappropriate to use one company's labor usage rates for another company, as suggested by FHTK, because each company may yield a different amount of garlic depending on both the size of its leased land as well as what types of inputs it uses (e.g., some

companies may use fertilizer and/or herbicide while others may not), which will result in varying amounts of labor hours incurred to produce each company's respective crops. Furthermore, because farming labor is variable, the workers at one field may plant or harvest the garlic more quickly than at a different field (e.g., unlike a manufacturing process that operates at a constant rate of speed).

Moreover, we disagree with FHTK's characterization of these record keeping requirements as punishing respondents for withholding non-existent information (i.e., akin to the use of adverse facts available). We note that if a company was able to provide acceptable documentation for all of its significant FOPs, but one minor FOP was not fully provided, the Department may consider the possibility of using an "FOP plug" as advocated by FHTK. Such a decision would depend on the facts on the record. For these reviews, however, we used the intermediate input methodology to remedy the concerns identified in the Intermediate Product Memorandum, including respondents' reported labor hours, because we believe we can achieve greater accuracy in the normal value calculations than using the respondents' FOPs. Therefore, the use of the intermediate input methodology is consistent with section 773(c)(1)(B) of the Act and is not a punishment or an application of adverse inferences, as suggested by FHTK.

Finally, we disagree with Shanghai LJ and Trans-High's assertions that we may not apply the intermediate input methodology retroactively when they relied on the FOP methodology to set their U.S. prices. Respondents' arguments mischaracterize our decision to use this calculation methodology as simply a change in the methodology from that used in previous reviews. A similar argument was made in the context of the 2002-2003 administrative review of certain preserved mushrooms from the PRC.<sup>50</sup> As in that case, the facts on the record of these reviews have changed from the factual information on the records of previous segments to this proceeding. In order to better understand the harvesting processes used by respondents, we scheduled verification in these reviews in order to observe actual harvesting activities in the field. In so doing we discovered that the respondents' reported labor FOPs were inaccurate and unsubstantiated by record evidence. The record of these reviews also contains additional factual information with respect to the weight of the garlic at varying stages of production and yield loss, which was not on the record of previous reviews. Thus, while the use of the intermediate input methodology deviates from the methodology used in previous reviews, the change in methodology is the direct result of the information on the record establishing that the use of the standard FOP methodology used in prior segments cannot yield an accurate normal value in this case. As we have already explained above, the purpose of using the intermediate input methodology for all respondents in these reviews is to calculate normal values as accurately as possible based on specific factual information obtained during the course of these reviews.

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<sup>50</sup> See Certain Preserved Mushrooms From the People's Republic of China: Final Results of Sixth Antidumping Duty New Shipper Review and Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review, 69 FR 54635 (September 9, 2004), and accompanying Issues and Decision Memorandum at Comment 1.

Moreover, we acknowledge that parties may use a formula for establishing U.S. prices in an attempt to avoid dumping. However, while a party may set its U.S. prices by estimating what the normal value for that review period will be, it is not appropriate to establish that benchmark based on normal value data that are not reliable, as we determined to be the case in these reviews. Finally, we alerted parties to our concerns regarding use of the FOP methodology as soon as record evidence began to demonstrate those concerns in the prior administrative review of this proceeding. Thus, we provided a full discussion of this issue in the prior segment of this proceeding. Specifically, we stated in the 9<sup>th</sup> AR Final Results:

For all of these reasons, the Department intends in future administrative reviews to examine whether or not, and the extent to which, standard verification procedures can be applied to respondents' books and records, as they relate to the growing and harvesting FOPs of fresh garlic in the PRC. Furthermore, the Department intends to examine more closely the ability of respondents to provide accurate, complete and most importantly, verifiable FOP data in questionnaire responses to the Department, when the normal books and records of these respondents apparently do not reflect all of the information relevant to such an analysis.

...In light of...the numerous unresolved issues pertaining to the production of fresh garlic, the Department intends to fully examine all of these issues in the next administrative review which is ongoing. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 69 FR 77181 (December 27, 2004).<sup>51</sup>

Therefore, we are continuing to value the respondents' normal value in these reviews using the intermediate input methodology.

### **Valuation of Garlic Bulb**

**Comment 2:** The petitioners disagree with the Department's decision in the Preliminary Results to use Indian import data to value the intermediate input, the raw garlic bulb. The petitioners state that the Department used Indian import data to value the garlic bulb only in the absence of other suitable Indian price data on the record. Subsequent to the Preliminary Results, the petitioners placed information on the record that they argue would allow the Department to calculate a more accurate value for the garlic bulb. Specifically, the petitioners argue that the data from the National Horticulture Research and Development Foundation ("NHRDF") that the Department used in previous reviews to value garlic seed<sup>52</sup> could be adjusted to reflect a surrogate value for bulb with the application of a ratio of seed value to bulb value. The petitioners propose that this ratio be derived using Mexican import data, which separates

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<sup>51</sup> See 9<sup>th</sup> AR Final Results at Comment 1.

<sup>52</sup> In the two most recent reviews, the Department rejected the use of Indian import data for valuing garlic seed in favor of information from the NHRDF. The Department found these data to be more similar to the subject merchandise because they were specifically for Indian garlic varieties that had been identified as high-quality and high yield ("HYV"). See Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 69 FR 33626 (June 16, 2004), and accompanying Issues and Decision Memorandum at Comment 1 ("8<sup>th</sup> AR Final Results"), and "9<sup>th</sup> AR Final Results" at Comment 2.

Mexican imports of garlic seed (HTS subheading 0703.20.01) from Mexican imports of other garlic (HTS subheading 0703.20.99).<sup>53</sup> This methodology yields a surrogate value for raw garlic bulb of 28.76 rupees per kilogram. The petitioners argue that the adjusted NHRDF garlic seed value is the only appropriate data available from India for use in valuing the garlic bulb.

The petitioners state that there are several reasons why it would be inappropriate to continue using the Indian import data to value raw garlic bulb in these final results. First, the petitioners point to the Department's reservations in 8<sup>th</sup> AR Final Results, 9<sup>th</sup> AR Final Results, and in the Preliminary Results that the "basket" nature of Indian import data is not suitable to value the high-quality garlic produced by the respondents.<sup>54</sup> Second, the petitioners state that 97.52 percent of Indian imports of fresh garlic during the POR was imported from the PRC and the remaining 2.48 percent was imported from four market economy countries. Of these five countries, the petitioners note that the PRC had the lowest average unit value (AUV). The petitioners argue that the import data from the four market economy countries are unusable because the import prices of these shipments have been depressed by the dominating presence of PRC imports. Third, the petitioners argue that India's 100 percent normal import duty on garlic (raised from 30 percent in January 2003) results in depressed import prices and a decrease in import volume. The petitioners state that this was indeed the case in 2003 with a lower import volume and AUV than the previous year. In 2004, the petitioners state that import volume rebounded somewhat but the AUV remained below the 2002 level. The petitioners note that PRC imports of fresh garlic accounted for 95 percent and 99 percent, respectively, of total Indian fresh garlic imports in 2003 and 2004. The petitioners conclude that these three factors make Indian import data distorted and inappropriate for purposes of valuing the fresh garlic bulb.

The petitioners further note that it is the Department's policy to exclude from consideration import data from market economy countries that are relatively small in quantity and that reflect substantially different AUVs than larger quantity imports from market economy countries.<sup>55</sup> The petitioners state that the import volume of each of the four market economy countries ranges from 0.01 percent of total import volume to 1.65 percent of total import volume and argue that these percentages can reasonably be considered "small" relative to total imports. While there are no larger volume market economy imports against which to compare the AUVs of these small import quantity countries, the petitioners hold that the Department must find the data from each of these four market economy countries aberrational.

The petitioners also call into question the reliability and appropriateness of the import data from each of the four market economy countries (Switzerland, Malaysia, Italy, and Nepal) from which there are imports of fresh garlic into India during the POR. The petitioners argue that the

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<sup>53</sup> See the petitioner's Surrogate Value Submission, dated January 5, 2006, at Attachment 24.

<sup>54</sup> See Preliminary Results, 70 FR 69942, 69950.

<sup>55</sup> See Luoyang Bearing Corp v United States, 358 F. Supp. 2d 1296, 1299 (CIT 2005) ("Luoyang Bearings II").

Department must reject Indian import data of fresh garlic from Switzerland as unreliable for the following four reasons. First, the petitioners state that, according to information from the UN Food and Agriculture Organization (“FAO”), Switzerland did not produce fresh garlic during the 2000-2004 period. Second, the petitioners state that Switzerland’s export statistics show that it exported only 0.257 metric tons of fresh garlic to the world during the POR, none of which was exported to India. Third, Switzerland’s export statistics of total garlic exports during the POR amount to less than 0.1 percent of Switzerland’s imports into India as reported by Indian import data. Finally, Switzerland’s export statistics for total garlic exports during the POR reflect an AUV 27 times higher than the AUV of Indian imports from Switzerland as reported by Indian import data. With regard to Malaysia, the petitioners state that FAO data show that there was no fresh garlic production in Malaysia during the 2000-2004 period. Additionally, the petitioners note that Malaysia’s export statistics show that Malaysia exported to India more than six times the amount of garlic by volume than Indian import data show. Finally, the petitioners state that Malaysia’s import data show that 95 percent of fresh garlic imported into Malaysia during the POR originated in the PRC. The petitioners argue that the large percentage of PRC imports of fresh garlic during the POR combined with the lack of domestic production of fresh garlic demonstrate that virtually all of Malaysia’s exports of fresh garlic to India during the POR actually originated in the PRC. The petitioners argue that, since it is the Department’s practice to disregard import statistics from NME countries, Malaysia’s exports of what is essentially PRC garlic, must also be eliminated from consideration. With regard to Italy, the petitioners note that FAO information shows an AUV for Italian exports of fresh garlic for the 2003-2004 period that is five times higher than the AUV for fresh garlic imports from Italy as reported by Indian import data.<sup>56</sup> The petitioners also note that Italy’s export statistics show that all of its exports of fresh garlic went to Europe, the United States, and Iceland, which is not consistent with Indian import data that report 3,000 kilograms of fresh garlic from Italy. With regard to Nepal, the petitioners state that the domestically grown garlic is not comparable in size or quality to Chinese garlic. The petitioners have placed on the record information that states that garlic grown in India’s short-day agro-climatic zone (*i.e.*, below 30 degrees latitude) has a significantly smaller bulb size than Chinese garlic or NHRDF varieties of garlic cultivated in India’s long-day zone.<sup>57</sup> Therefore, the petitioners conclude that since Nepal geographically lies below 30 degrees north latitude, the entire country falls within the short day agro-zone and that garlic grown in Nepal is likely not comparable to Chinese garlic.

The petitioners also argue that data from the Agricultural Information Marketing Network (“Agmarknet”) is unsuitable for use in valuing the garlic bulb. The petitioners point out that the Department has declined to use Agmarknet data to value garlic seed in the past because it was

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<sup>56</sup> Id. at Attachment 3.

<sup>57</sup> See the petitioners’ January 5, 2006, Surrogate Value Submission at Attachment 33. Page 11 of Attachment 33 states that since certain North Indian states “fall in the long-day zone, sunlight is available for a longer period, which facilitates bulb formation and development and hence produces relatively larger bulbed garlic.”

unclear exactly what types of products the data encompassed.<sup>58</sup> Specifically, the Department rejected this source as an appropriate surrogate value for seed because it found that the product reflected by this data was of lesser quality than the high-yield, high-quality seed used by the respondents in the production of subject merchandise.<sup>59</sup> Regarding “China” variety price data in Agmarknet, the petitioners state that the “China” variety data account for only 0.24% of the total data reported, and they further assert that it is unclear whether the “China” variety relates to imported Chinese garlic.<sup>60</sup> The petitioners note that the Department stated that it could not determine the extent to which the Agmarknet data were tax exclusive, and they claim that no further evidence has been placed on the record of these reviews to contradict or disprove the Department’s decision to reject Agmarknet data in the Preliminary Results.

The petitioners, therefore, conclude that, aside from adjusting NHRDF HYV seed data to reflect a suitable value for bulb, there are no other reliable or appropriate Indian data on the record of the instant reviews for valuing raw garlic bulb.

The GDLSK respondents agree with the Department’s decision in the Preliminary Results not to use the NHRDF garlic seed value and argue that it would be inappropriate to use this value for garlic bulbs for the final results because it is not comparable to garlic bulbs,<sup>61</sup> is inclusive of unknown packing expenses, and is not a market-based value because the seeds in question are mostly distributed by NHRDF as part of demonstrations, production kits, and seed multiplication programs rather than sold for consumption.<sup>62</sup> In addition, FHTK, the GDLSK respondents, and Ziyang argue that it would be improper to either use Mexican industry data or to adjust the NHRDF seed values using a ratio of Mexican seed value to garlic bulb value as the petitioners have suggested for several reasons. First, the GDLSK respondents and Ziyang both contend that there is no record evidence that indicates that the garlic production process in Mexico is at all similar to that in India and that the Mexican data submitted by the petitioners cannot be relied

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<sup>58</sup> See 9<sup>th</sup> AR Final Results.

<sup>59</sup> See Memorandum to the File “Factors Valuations for the Preliminary Results of the Administrative Review and New Shipper Reviews,” dated November 10, 2005 (“Preliminary FOP Memorandum”) at p. 7.

<sup>60</sup> See the petitioners response to request for comments on Agmarknet data, dated March 28, 2006, at page 4.

<sup>61</sup> The GDLSK respondents cite the International Trade Commission (“ITC”) finding that fresh garlic is a separate product from seed garlic. See Fresh Garlic from China, USITC Pub. No. 2825, Inv. No. 731-TA-683 (“Final ITC Determination”) (1994). The GDLSK respondents argue that the ITC’s specific exclusion of garlic seed from the scope of the antidumping duty order was based on the same criteria that the Department uses in determining whether merchandise is “comparable” (i.e., physical characteristics, end uses, and similar production processes). See GDLSK Rebuttal Brief at 4.

<sup>62</sup> See Memorandum to the File from Steve Williams re: Contact with National Horticultural Research and Development Foundation Regarding Garlic Seed Values in India (October 24, 2005).

upon to derive a surrogate value for garlic bulb.<sup>63</sup> The GDLSK respondents additionally argue that the Mexican and Indian economies are not at all economically comparable to the PRC and that pricing trends in Mexico have absolutely no relationship to the market value of similar products in India. Further, the GDLSK respondents assert that the ratio proposed by the petitioners is not specifically a seed to bulb valuation because the “bulb” value is taken from an HTS category entitled “other” that could contain values for garlic in non-bulb form (e.g., peeled garlic). FHTK contends that this “other” category is likely a basket category that contains different forms of garlic as demonstrated by the aberrational price swings that this HTS category exhibits from month to month. FHTK further points out that it would be inconsistent to create a ratio using the seed and “other” garlic import data from Mexico, since the seed HTS category proposed by the petitioners is 100 percent imported from the United States while the “other” garlic HTS category is comprised of various forms of garlic imported from several countries, with the United States representing less than 15 percent of the total import value in that category. FHTK concludes that the petitioners’ proposed ratio is “over simplistic” and would incorrectly apply a seed to bulb output ratio of higher yield, higher priced U.S. imports into Mexico to lower priced, lower yield Indian garlic. Thus, FHTK argues that this methodology could only be workable with additional information on variables to adjust for the different yields experienced by each country that is not currently on the record for these reviews. Ziyang additionally points out that the Department stated that it switched over to using the intermediate product methodology due to the uncertainty in quantitatively measuring the factors involved in growing garlic bulbs from garlic seeds in the PRC. Ziyang argues that a ratio of Mexican garlic seed value to garlic bulb value encompasses these same uncertainties, and therefore cannot be used to accurately convert a PRC seed value to a bulb value.

With regard to the petitioners’ comments concerning the use of Indian import data, Dong Yun, FHTK, the GDLSK respondents, Shanghai LJ, Trans-High, and Ziyang contend that all of the petitioners’ arguments are unsupported and based on unfounded speculation. Specifically, in response to the petitioners’ claims that Indian garlic is inferior, and thus not comparable to PRC garlic, both Dong Yun and Ziyang state that their production yields all grades of garlic, including lower-grade and smaller varieties, that are generally sold domestically or exported to other markets. Because Dong Yun’s and Ziyang’s reported FOPs include inputs used to grow both low and high-quality garlic, Dong Yun and Ziyang argue that the subject merchandise encompasses all qualities of fresh garlic produced by respondents, and not just the high quality garlic exported to the United States. Ziyang further points out that the quality of Indian garlic is high enough to have been exported to the United States and to other countries. FHTK further contends that the petitioners’ assertions that larger garlic is necessarily of higher quality than smaller garlic is unfounded and subjective. FHTK, Shanghai LJ, Trans-High, and Ziyang cite reports that

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<sup>63</sup> Ziyang infers that the Mexican garlic seed values that the petitioners argue to use to adjust the NHRDF prices may not have been for unaffiliated arms-length transactions since Jon Vessey, a petitioner in this proceeding, is involved with the Mexican garlic industry. Also, Ziyang states that the imported California Early seed was used to only produce one quarter of Mexico’s total production, and that further research should be done into the type of seed used to produce the remaining 75 to 80 percent of Mexican garlic. See Ziyang Rebuttal Brief at 8. For the GDLSK respondents’ arguments on the unreliability of Mexican data, see supra p. 38.

describe Indian garlic as superior in quality to certain volumes of Chinese garlic<sup>64</sup> and preferred by Indian consumers. FHTK states that “...the Department’s comparability analysis aims not to achieve scientific accuracy but to capture accuracy in value, according to comparable market conditions.” Thus, FHTK argues that the petitioners’ definition of “comparable merchandise” is too narrowly defined and subjective, and contradicts the Department’s past practice<sup>65</sup> of examining comparability with a broad and flexible approach with a preference for valuing inputs within a single, economically comparable surrogate country. FHTK further contends that this preference results in more consistent results than selecting factor values from different surrogate countries. The GDLSK respondents counter the petitioners’ claims that the Indian HTS basket category contains lower quality garlic than Chinese garlic by arguing that “(i)f...India produces small garlic bulbs, it would be illogical to conclude that India imports these small garlic bulbs when they are available domestically.” The GDLSK respondents note that the Department has only rejected the use of the Indian import data when it sought to value garlic seed, not when it sought to value garlic bulb, and contend that the petitioners’ cites to previous reviews are “misguided.” Shanghai LJ and Trans-High also counter that even if this Indian basket category does include higher valued garlic products such as garlic seed, then it would result in raising the respondents’ normal value and be to the petitioners’ advantage.

In addition, Shanghai LJ and Trans-High argue that basket categories have been used by the Department in past proceedings,<sup>66</sup> and that if the petitioners’ arguments are accepted in this case, the Department would have to re-evaluate its use of the Indian import data in each one of these other cases where a basket category is used as a surrogate value. Shanghai LJ and Trans-High note that the Department prefers to use Indian import data because they reflect a “broad and representative range of prices in effect during the POR,” and “reflect numerous transactions.” In addition, FHTK notes that India has been used as the proper surrogate country in all prior reviews of garlic.<sup>67</sup>

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<sup>64</sup> See GDLSK’s January 5, 2006, Surrogate Value Submission at Exhibit 1.

<sup>65</sup> FHTK cites Certain Helical Spring Lock Washers From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 68 FR 63060, 63062 (November 7, 2003), Sebacic Acid from The People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Partial Rescission, 69 FR 47409, 47411 (August 5, 2004), and Creatine Monohydrate from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 69 FR 62767, 62769 (November 6, 2003). See FHTK Rebuttal Brief at 12.

<sup>66</sup> See Certain Cased Pencils from the People’s Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Reviews, 70 FR 42301 (July 22, 2005), and accompanying Issues and Decision Memorandum at Comment 2.

<sup>67</sup> See e.g., Fresh Garlic from the People’s Republic of China: Final Results of Antidumping Duty New Shipper Review, 67 FR 72139 (December 4, 2002); Fresh Garlic from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review in Part, 68 FR 4758 (January 30, 2003); Fresh Garlic from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 69 FR 33626 (June 16, 2004); Fresh Garlic from the People’s Republic of China: Final Results of Antidumping Duty New Shipper Reviews, 69 FR 46498 (August 3, 2004); Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review, 68 FR 36767 (June 19, 2003).

Further, the GDLSK respondents, Shanghai LJ, and Trans-High counter the petitioners' various arguments against the validity of the Indian import data with respect to the garlic imported into India from the five market economies: Switzerland, Malaysia, Egypt, Italy, and Nepal. Specifically, the GDLSK respondents claim that the petitioners made similar arguments of Chinese transshipments through Malaysia and Egypt in an effort to discredit the Indian import data in a previous review,<sup>68</sup> and that the Department dismissed these arguments as "based on mere speculation at best."<sup>69</sup> The GDLSK respondents further contend that even if the petitioners' speculations of Malaysia and Egypt exporting Chinese garlic were true, it would still not affect the validity of the import data, as the garlic entered a market economy prior to entering into India, and would thus represent a market economy price. In addition, the GDLSK respondents claim that 95 percent of garlic imports into Switzerland, the largest market economy exporter to India, were from other market economies, which bolsters the defensibility and viability of the Indian import data.

Dong Yun and the GDLSK respondents discount the petitioners' arguments that the Indian import data are unreliable because they do not match the export data from the market economies. Dong Yun questions why the petitioners assert the accuracy of the export data over the import data, and the GDLSK respondents argue that countries' export and import data rarely match perfectly due to the timing of shipments and different date record keeping systems. The GDLSK respondents also discount the petitioners' arguments that the Indian import data for Italy are unreliable because their AUVs are 20 percent less than prices reported for Italy's garlic exports to all other countries. Specifically, the GDLSK respondents claim that this comparison of AUVs is improper without any information on the mix of products exported from Italy to the different countries listed. Finally, the GDLSK respondents refute the petitioners' claim that garlic imported from Nepal into India is not comparable to the "high-quality" garlic exported by the PRC to the United States due to Nepal's location in a "short-day zone." The GDLSK respondents contend that the petitioners have provided no evidence to support its claims that the weather conditions in Nepal could not allow the production of high quality garlic, that Nepal's garlic bulbs are relatively small compared to Chinese garlic, and that the information on Nepal's agricultural climate is otherwise unsubstantiated. According to the GDLSK respondents, the petitioners make this inference from a self-commissioned report that only discusses weather conditions in India relative to the PRC, and which does not refer to the weather conditions in Nepal at all.

Dong Yun and the GDLSK respondents rebut the petitioners' conclusion that the 100 percent duty has a downward effect on the AUV of Indian imports of garlic. Specifically, Dong Yun argues that there could be innumerable other reasons for Indian prices to fluctuate from year to year, such as possible increases or decreases in the number of Indian garlic producers or changes

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<sup>68</sup> See Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review in Part, 68 FR 4758 (January 30, 2003).

<sup>69</sup> See Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review in Part, 68 FR 4758 (January 30, 2003), and accompanying Issues and Decision Memorandum at Comment 9.

in the quality of Indian garlic. The GDLSK respondents argue that this 100 percent duty is a sign that the Indian government has taken extraordinary measures to protect its garlic industries. The GDLSK respondents argue that if the AUVs were abnormally low, the Indian government would likely have commenced antidumping action to further protect its garlic industry, which it has not done. The GDLSK respondents argue that the 100 percent duty, combined with the large domestic garlic supply, actually supports the conclusion that exporters must be shipping higher quality garlic into India. The GDLSK respondents also rebut the petitioners' claim that the reported import AUVs are aberrational, as evidenced by the fact that the AUVs from all of the market economies are similar to each other, not widely different. Dong Yun, the GDLSK respondents, Shanghai LJ, and Trans-High contend that the petitioners have no support for their claim that the Indian import data are aberrational due to the large percentage of NME imports and low quantity of imports from market economies. Rather, the GDLSK respondents argue that the import data from market economies is proportional in quantity to their world share of garlic production. Shanghai LJ and Trans-High assert that "(t)he measure is not whether certain imports are significant as compared to other or total imports; ...it is whether any one country or group of countries supply commercially significant quantities in and of itself." Trans-High and Shanghai LJ argue that in this case, the quantities of garlic exported by market economies into India are indeed commercially significant amounts, separate from any comparisons of the quantities exported by the PRC. In addition, FHTK refutes the petitioners' arguments that the large amount of PRC imports have had a price-depressive effect in the international garlic market. Specifically, FHTK argues that if the PRC were in the position to dominate and set world prices, it would have all the more reason to increase prices rather than depress them. FHTK argues that the prices of garlic in the world market are the product of competition between the various garlic producing countries and amongst the individual PRC producers.

Finally, the GDLSK respondents state that the accuracy of the Indian import data is further corroborated by other sources,<sup>70</sup> they have been used in numerous proceedings to value a wide array of inputs, and that the petitioners have not provided any credible evidence to disprove the appropriateness and accuracy of these data.

With regard to the petitioners' comments concerning the Agmarknet data, the GDLSK respondents argue that these data are actually the best information on the record with which to value the intermediate product because they more accurately reflect the costs the respondents would incur if they were operating in a market economy environment.<sup>71</sup> In addition, the GDLSK respondents state that the Department has a conditional preference for using domestic data, given

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<sup>70</sup> Other sources cited by the GDLSK respondents include similar AUV prices at <<http://agmarknet.nic.in>> and import data from other market economies selected as possible surrogates by the Department for this proceeding. See id. at 17.

<sup>71</sup> See 19 U.S.C. § 1677b(c) and Air Products and Chemicals, Inc. v. United States, 14 F. Supp. 2d 737, 741 (CIT 1998).

that the data are contemporaneous, publicly available, and exclusive of taxes.<sup>72</sup> The GDLSK respondents note that Agmarknet data are contemporaneous and publicly available. While they may not be tax exclusive, the GDLSK respondents point out that Indian import data are inclusive of insurance and freight costs.<sup>73</sup> The GDLSK respondents also note that the Department rejected Agmarknet data in previous reviews because those data appear to reflect prices of a product that are low-quality and low yield, as opposed to high-quality, high-yield Chinese garlic. The GDLSK respondents argue that the yield of the garlic is only relevant in the valuation of garlic seed, and is irrelevant to the valuation of the finished bulb. Further, with regard to quality, the GDLSK respondents note that they have placed on the record a newspaper article stating that Indian garlic is of superior quality and flavor to Chinese garlic.<sup>74</sup> Additionally, the GDLSK respondents note that there is evidence from a market research report submitted by petitioners that indicates that high-quality garlic is grown in certain areas of India.<sup>75</sup> Specifically, this market research report states that 85-90 percent of the garlic cultivation in certain northern Indian states (Himachal Pradesh, Uttaranchal, and Jammu & Kashmir) are of high-yield variety. The GDLSK respondents further note that the Agmarknet data is divided by province, which would allow the Department to use Agmarknet prices from these northern states to calculate a surrogate value for high-yield, high-quality garlic bulb. Finally, the GDLSK respondents note that the scope of the order under review applies to “all grades of garlic.” Therefore, the GDLSK respondents urge the Department to use Agmarknet data to derive a surrogate value. Dong Yun agrees with the GDLSK respondents that the Agmarknet data are the best available information with which to calculate a normal value, and argues that mere speculation of the quality of garlic grown and sold domestically in India was the only reason the Department did not use this data in the Preliminary Results.

Aside from the Agmarknet data and the Indian import data, the GDLSK respondents also argue that the Department has overlooked other information on the record that could be used for the surrogate valuation of the garlic bulb, namely data in the quarterly bulletins from NHRDF.<sup>76</sup> In particular, the GDLSK respondents draw the Department’s attention to Volume XXIV(I) 2004 of the NHRDF quarterly bulletin,<sup>77</sup> which contains a table showing “market yield” for Yumana Safed-3 garlic seed. The GDLSK respondents find a value for a quintal of garlic grown from

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<sup>72</sup> See Hebei Metals & Minerals Import & Export v. United States, 366 F. Supp. 2d 1264, 1273 (CIT 2005). See also, Notice of Final Results of Antidumping Administrative Review: Freshwater Crawfish Tail Meat from China, 67 FR 19546 (April 22, 2002), and accompanying Issues and Decision Memorandum, at Comment 2.

<sup>73</sup> See Notice of Final Results of Antidumping Administrative Review: Automotive Replacement Glass Windshield from the People’s Republic of China, 67 FR 6482 (February 12, 2002), and accompanying Issues and Decision Memorandum, at Comment 31

<sup>74</sup> See GDLSK respondents “Second Surrogate Value Submission,” dated January 5, 2006.

<sup>75</sup> See the petitioners’ January 5, 2006, Surrogate Value Submission at Exhibit 33.

<sup>76</sup> See the petitioners’ Surrogate Value Submission, dated October 20, 2005.

<sup>77</sup> Id.

Yumana Safed-3 seed by taking the “net return” value (rupees per hectare) and dividing it by the “recovery after storage” (quintal per hectare). The GDLSK respondents urge the Department to use this number to value fresh garlic because the Department has used this source previously to value garlic seed, and has acknowledged that Yumana Safed-3 seed produces garlic comparable to that produced by the respondents.

Regarding the value put forth by the GDLSK respondents for Yumana Safed-3 garlic seed, the petitioners note that this value actually represents Indian rupees per quintal (i.e., per hundred kilogram), which they claim is not a reasonable market value for garlic.

#### Valuation of Garlic Bulb Using Indonesian, Sri Lankan, Philippine, or Egyptian Data

Should the Department determine that there are no usable values within India from which to derive an appropriate surrogate value for garlic bulb, it is the Department’s practice to next examine data from the other four surrogate countries (i.e., Indonesia, Sri Lanka, the Philippines, and Egypt) that the Department has found to be at a level of economic development comparable to that of the PRC.<sup>78</sup> The petitioners state that none of these four countries contain any viable data with which to value the raw garlic bulb.

The petitioners argue that the Department should not use Indonesian data to value raw garlic bulb because Indonesia is not a net exporter of garlic. The petitioners note that Indonesia imported 243,000 metric tons of garlic during the POR (98.52 percent from the PRC), while exporting only 167 metric tons. The petitioners conclude that Indonesia cannot qualify as a “significant producer” of fresh garlic for the purposes of the Department’s surrogate country analysis because it is not a “net exporter” as required by the Department’s criteria for surrogate country selection.<sup>79</sup> In addition, the petitioners argue that Indonesian garlic is of a lower quality than the subject merchandise from the PRC. The petitioners state that Indonesia is situated well below the long-day agro-climate zone and, therefore, likely produces garlic bulbs of lower quality than those produced by the PRC respondents. Finally, the petitioners argue that PRC fresh garlic imports dominate Indonesia’s imports to the same degree and manner that they dominate Indian imports.

The petitioners also argue that there are no suitable data from Sri Lanka on the record with which to value garlic bulb because there is no evidence of significant domestic garlic production and because Sri Lanka’s garlic imports are dominated by PRC imports. First, the petitioners note that FAO information shows that no fresh garlic was produced in Sri Lanka for the 2000-2004 period,<sup>80</sup> and they argue that there is no evidence showing that Sri Lanka is a significant producer of fresh garlic. Second, the petitioners state that Sri Lanka’s import data show that more than 95.99 percent of its garlic imports during the POR were from the PRC (71.29 percent from the

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<sup>78</sup> See Memorandum to the File “Tenth Administrative Review and New Shipper Reviews of the Antidumping Duty Order of Fresh Garlic from the People’s Republic of China: Selection of a Surrogate Country,” dated October 20, 2005 (“Surrogate Country Selection Memorandum”).

<sup>79</sup> See Import Administration Policy Bulletin No 04.1 Non-Market Economy Surrogate Country Selection Process (“Policy Bulletin 04.1”), available at <<http://ia.ita.doc.gov>> at 1.

<sup>80</sup> See the petitioners’ Surrogate Value Submission, dated January 5, 2006, at Attachment 3.

PRC and 24.70 percent from Hong Kong). The petitioners argue that imports of garlic from Hong Kong are presumably of PRC origin and, therefore, Sri Lanka's imports of fresh garlic are dominated by PRC imports.

The petitioners further assert that there are no suitable data from the Philippines on the record of these reviews for valuing the raw garlic bulb. First, the petitioners state that because the country is located in the short-day agro-climate zone, the garlic grown there will be relatively smaller and relatively more pungent than the garlic grown in the long-day zones of the PRC.<sup>81</sup> Further, the petitioners note that there are no domestic garlic prices in the Philippines on the record of these reviews. Second, the petitioners state that, according to Philippine import data, 99.15 percent of fresh garlic imports during the POR are from the PRC, with the remainder being imported from Hong Kong, South Korea, and Singapore. Thus, according to the petitioners, the PRC dominates the Philippine import market for fresh garlic. Third, the petitioners assert that the 40 percent ad valorem normal duty on garlic (increased on December 30, 2004) has a price-depressing effect on garlic imports, similar to the effects the petitioners noted in connection to the 100 percent Indian tariff on garlic imports.

Finally, the petitioners argue that there are no suitable data from Egypt on the record of these reviews to value the raw garlic bulb. First, the petitioners state that the record does not include any domestic prices for fresh garlic grown in Egypt during the POR. Second, the petitioners state that Egyptian import data show that in 2003 and 2004, 100 percent and 96 percent of fresh garlic imports, respectively, were from the PRC. Further, the petitioners note that the remaining four percent of garlic imports in 2004 were from "all other" countries, which the petitioners assert makes it impossible for the Department to determine whether any market economy imports were entered into Egypt during the POR and rendering the import data unuseable.

The GDLSK respondents disagree with the petitioners and believe that, should the Department choose not to use India as the surrogate country, the other market economy countries selected by the Department are viable surrogate country choices with reliable data. First, the GDLSK respondents state that the petitioners did not provide any documentary evidence to support their claim that the garlic grown in Indonesia is not comparable to Chinese garlic. In fact, the GDLSK respondents point out that Indonesia exported over 160 thousand kilograms of garlic during the POR,<sup>82</sup> which were, de facto, export-quality. The GDLSK respondents also deem the petitioners' arguments on the difference between Chinese and Indonesian yields as irrelevant, as "...the Department is valuing the finished garlic instead of the garlic seed." Second, with regard to Sri Lanka, the GDLSK respondents state that the petitioners fail to show and provide evidence that the FAO data cover all agricultural production and how Chinese garlic prices affect prices from other countries. Third, the GDLSK respondents argue that the Philippines is also a proper surrogate country, with production of over 15 million kilograms of garlic in 2003 and 2004. They counter that the articles submitted by the petitioners describing the downturn of the

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<sup>81</sup> See the petitioners' January 5, 2006, Surrogate Value Submission at Attachment 33.

<sup>82</sup> See the petitioners' 2<sup>nd</sup> Surrogate Value Submission, at Exhibit 15.

Philippine garlic industry state that agricultural sectors of all countries are highly volatile and cyclical, and that the current garlic recession in the Philippines does not discount it as a significant producer of fresh garlic. The GDLSK respondents also take issue with the petitioners' arguments that the Philippines does not produce garlic comparable to that of the PRC, stating that in their argument, the petitioners failed to cite documentary evidence showing that higher quality garlic cannot be grown in any country located in the "short-day" agro-climate zone. Finally, the GDLSK respondents state that there are various domestic and international factors that can affect the price of an imported garlic bulb, and that the petitioners' claims that Chinese prices alone have been able to distort the import data from the Philippines and Egypt are "far fetched and based on sheer speculation."

The GDLSK respondents conclude that all of the arguments that the petitioners made regarding the invalidity of the four other possible surrogate countries (*i.e.*, Indonesia, Sri Lanka, the Philippines, and Egypt) are without merit and factual support.

#### Valuation of Garlic Bulb Using Mexican Data

The petitioners argue that Policy Bulletin 04.1 gives the Department broad discretion in valuing FOPs using more than one surrogate country and even surrogate countries that are not economically comparable to the NME. The petitioners assert that the overriding directive is to calculate dumping margins as accurately as possible.<sup>83</sup> The petitioners state that, while Policy Bulletin 04.1 allows the team to decide for each case what constitutes "comparable merchandise," it states that in cases involving agricultural products, comparability is best interpreted narrowly. In the instant reviews, the petitioners hold that a product-specific approach is imperative, since valuing the raw garlic bulb is central to the intermediate input valuation methodology. Since the PRC produces an unusual product vis-a-vis other Asian countries, the petitioners assert that the Department should primarily focus the surrogate valuation exercise on identifying "comparable merchandise," rather than "economic comparability."

The petitioners cite two cases that they assert demonstrate the Department's willingness to select a significant producer of comparable merchandise even if the country is not economically comparable to the PRC: Crawfish from the PRC<sup>84</sup> and Cased Pencils from the PRC.<sup>85</sup> In the case of Crawfish from the PRC, the petitioners note that over the course of several reviews, the

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<sup>83</sup> See Rhone Poulenc, Inc. v. United States, 899 F.2d 1185, 1191 (Fed. Cir. 1990)

<sup>84</sup> See Notice of Final Determination of Sales at Less Than Fair Value: Freshwater Crawfish Tail Meat From the People's Republic of China, 62 FR 41347, 41354 (August 1, 1997); Notice of Preliminary Results of Antidumping Duty Administrative Review and New Shipper Reviews, Partial Rescission of the Antidumping Duty Administrative Review, and Recession of a New Shipper Review: Freshwater Crawfish Tail Meat From the People's Republic of China, 65 FR 60399, 60404 (October 11, 2000); and Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Administrative Review, 67 FR 19546 (April 22, 2002), and accompanying Issues and Decision Memorandum at Comment 1 (collectively, "Crawfish from the PRC").

<sup>85</sup> See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cased Pencils From the People's Republic of China, 59 FR 30911 (June 16, 1994), at 30913-14; and Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils From the People's Republic of China, 69 FR 55625 (November 8, 1994), at 55630-32 (collectively, "Cased Pencils from the PRC").

Department valued a major input, live crawfish, using official data from Spanish imports of whole crawfish from Portugal and using Australian domestic prices of live crawfish. In Cased Pencils from the PRC, the petitioners note that the Department used U.S. prices of basswood to value PRC lindenwood, because the U.S. product was virtually indistinguishable from the PRC input. The petitioners state that the Department's final determination in Cased Pencils from the PRC was upheld by the Court of International Trade ("CIT") in Writing Instrument Manufacturers Association, Pencil Section v. United States, 21 C.I.T. 1185, 984 F. Supp. 629 (1997). The petitioners conclude that Crawfish from the PRC and Cased Pencils from the PRC stand for the principle that economic comparability can be dismissed in pursuit of a reliable, product-specific value for major FOPs.<sup>86</sup> Moreover, the petitioners note that, in both cases, the Department was also guided by the quality of the data. Therefore, the petitioners urge the Department to place primary emphasis on valuing the intermediate input by using surrogate value data that is as comparable as possible to the garlic bulb produced in the PRC.

To this end, the petitioners assert that Mexico is a significant producer of comparable merchandise and that reliable surrogate value data for valuing the raw garlic bulb are available. The petitioners note that they have placed on the record a declaration from a California-based garlic grower stating that U.S. purchasers of fresh garlic consider the fresh garlic produced in California, Mexico, and the PRC to be highly comparable to, and substitutable for, each other.<sup>87</sup> The petitioners also note that Mexico continues to be the second largest offshore supplier of fresh garlic to the United States, having been displaced as the largest foreign supplier to the United States by the PRC in 2004. Citing Redetermination Pursuant to Court Remand, Yantai Oriental Juice Co., et al. v. United States and Coloma Frozen Foods, Inc. et al., Court No 00-07-00309 (November 15, 2002) at 4-9 (available at <<http://ia.ita.doc.gov>>) the petitioners claim that the Department has viewed a country's status as a major exporter to the United States as supporting a determination that that country qualifies as a significant producer of comparable merchandise. The petitioners also assert that Mexico and the United States have substantial bilateral trade in garlic seed, which supports their contention that Mexico is a significant producer of comparable merchandise.

The petitioners argue that Mexican import data are also reliable and appropriate. First, Mexican imports of fresh garlic are limited to the United States, Chile, and Argentina – all countries that the petitioners claim are producers of fresh garlic comparable to the garlic produced by the PRC respondents and exported to the United States. Mexican import data also have separate HTS subheadings for fresh garlic for sowing and other garlic, which the petitioners contend allows the Department to have a high degree of confidence that imports under HTS subheading 0703.20.99 ("Other") are limited to fresh garlic for consumption and do not include values for seed. The petitioners also argue that Mexican import data are not distorted by significant tariffs or significant volumes of low-priced PRC garlic. Further, the petitioners assert that there is no evidence impeaching the reliability of Mexican import data, and contest the Department's statement in the Preliminary FOP Memorandum that it was no better able to ascertain the quality

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<sup>86</sup> See Yantai Oriental Juice Co. v. United States, 26 CIT 605 (June 18, 2002).

<sup>87</sup> See the petitioners' Surrogate Value Submission, dated January 5, 2006, at Exhibit 23.

or nature of the garlic products included in the Mexican import data than those included in the Indian data. The petitioners contend that this is not the case, as the countries listed as suppliers of garlic to Mexico are all well-known producers and exporters of high-quality fresh garlic. The petitioners conclude that evidence on the record demonstrates that the Mexican import data are a relatively “clean” source of information on the “fair value” of the subject merchandise.

The petitioners also state that, if the Department declines to use Mexican import data to value raw garlic bulb, in the alternative it should use official Sistema Nacional de Información e Integración de Mercados (the National System of Information and Integration of Markets) from the Economic Ministry of the Government of Mexico ([see <http://www.secofi-sniim.gob.mx/i\\_default.asp>](http://www.secofi-sniim.gob.mx/i_default.asp)) data on wholesale prices for fresh white and purple garlic in Mexico already submitted by the petitioners on the record of the instant reviews.<sup>88</sup>

FHTK, Dong Yun, the GDLSK respondents, Shanghai LJ, Trans-High, and Ziyang counter that the petitioners’ arguments to switch from India to Mexico for the valuation of garlic bulb are not credible and are unsupported by record evidence. These respondents argue that India is the most appropriate surrogate country to use in the valuation of the garlic bulb for the final results because it is economically comparable to the PRC, is a significant producer of garlic, and there are no supported, credible arguments made by the petitioners that would warrant a change to a different surrogate country. These respondents further argue that Mexico is an inappropriate choice for a surrogate country because it is not economically comparable to the PRC and is not a significant producer of subject merchandise.

FHTK states that the primary tool that the Department uses in determining economic comparability is per-capita gross national income (“GNI”).<sup>89</sup> FHTK points out that India’s GNI of \$620 is comparable to the PRC’s GNI of \$1,290. FHTK also notes that, according to FAO statistics, India is the second largest garlic producer in the world, which satisfies one of the criteria in the Department’s selection of a surrogate country.<sup>90</sup> The GDLSK respondents further argue that the petitioners have selected certain sentences from the Department’s Policy Bulletin 04.1 to provide justification for abandoning the surrogate country selection methodology and selecting Mexico. However, the GDLSK respondents argue that a review of Policy Bulletin 04.1 in its entirety reveals that it provides no such justification. Rather, the GDLSK respondents argue that Policy Bulletin 04.1 first details the standard procedure of selecting a surrogate country based on economic comparability to the PRC and significant production of comparable merchandise, which the Department has followed in this case in choosing India as the primary surrogate country. FHTK, the GDLSK respondents, and Ziyang point out that the petitioners

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<sup>88</sup> See the petitioners’ Surrogate Value Submission, dated October 21, 2005, at Exhibit 1.

<sup>89</sup> FHTK cites Notice of Initiation of Antidumping Duty Investigation: Certain Malleable Iron Pipe Fittings from the People’s Republic of China, 67 FR 70579, 70580 (November 25, 2002) (citing 19 C.F.R. 351.408(b)), in its January 30, 2006, Rebuttal Brief (“FHTK Rebuttal Brief”) at 21.

<sup>90</sup> The Department’s criteria in selecting surrogate countries are economic comparability and significant production of the subject merchandise. See Policy Bulletin 04.1.

actually argued in their March 31, 2005, Surrogate Value Submission that the Department should continue to use India as the primary surrogate country, and question why the petitioners would suddenly change their argument.

FHTK points out that the Department will only step outside the primary surrogate country group to value an input when the product is unusual or unique, is not traded internationally, or the candidate countries produce insignificant amounts of the merchandise. FHTK and the GDLSK respondents disagree with the petitioners' arguments that fresh garlic constitutes an "unusual or unique" product, which would allow the Department to look beyond economically comparable countries for an appropriate surrogate value. They argue that fresh garlic does not require any unique inputs or costs of production and is produced in many countries in the world. In addition, FHTK and the GDLSK respondents contend that comparisons of garlic varieties are relative and subjective, and that different garlic varieties are interchangeable, which makes identifying one type of garlic as "unique" illogical. Ziyang also points out that all grades of garlic are within the definition of the scope of the subject merchandise, including those with varying color, size, sheathing, and level of decay, and so classification within garlic of "unusual or unique" merchandise is not applicable in this case. FHTK further argues that because fresh garlic is traded in substantial quantities in the international market and India is the second largest garlic producer in the world, there is no reason to select an alternate surrogate country according to the guidelines outlined in the Policy Bulletin 04.1.

The GDLSK respondents further point out that Policy Bulletin 04.1 requires the Department to follow a specific procedure when it needs to select a new surrogate country. Specifically, even if the Department found India and the four other chosen market economies to be inappropriate for valuing surrogate values, it would still have to follow a separate procedure in selecting another viable surrogate country, which the Department has not yet done. Ziyang also argues that should the Department change the surrogate country from India to Mexico to value inputs for the final results, interested parties should be allowed to comment and the Department should collect more information to support this drastic case change. Ziyang argues that since India has been chosen as the surrogate country in all past reviews, it would unfairly harm Ziyang's results in these reviews if Mexico were chosen so late in the proceeding.

Ziyang further argues that there is no evidence on the record regarding the specifics of the Mexican garlic industry (e.g., planting operations, level of mechanization, domestic markets, distribution systems, etc.). Ziyang argues that, given the dramatic effect that having Mexico as a surrogate country would have on the case, interested parties should be given the opportunity to address some of these unresolved issues in further detail.

FHTK further disputes the petitioners' claims that comparability of merchandise is more important than economic comparability in the selection of a surrogate country. FHTK argues that the weight of each criteria in selecting a surrogate country is unspecified in Policy Bulletin 04.1, and will vary depending on the facts of each specific case. In fact, FHTK argues that Policy Bulletin 04.1 lists the factors in the order that the Department should consider them when selecting a surrogate country, with economic comparability being the first consideration.

In addition, FHTK and the GDLSK respondents refute the petitioners' reliance on Crawfish from the PRC and Pencils from the PRC to state that the economic comparability of a country can be discarded entirely in favor for merchandise comparability. Specifically, FHTK and the GDLSK respondents state that the main circumstance in Crawfish from the PRC (i.e., that none of the countries named in the Surrogate Country Selection Memorandum were significant producers of crawfish tail meat or any similar product) that led the Department to use a country that was not economically comparable to the PRC to value a major input is not a factor at all in the garlic case, where the record shows that all of the countries listed in the surrogate country memorandum are producers of garlic, with India being the second largest in the world.<sup>91</sup> The GDLSK respondents further note that the Department states in Crawfish that "(t)he Department departs from the surrogate country list only when absolutely necessary."<sup>92</sup> The GDLSK respondents also state that there are several major differences in Cased Pencils from the PRC that distinguish it from this case. First, the GDLSK respondents argue that Cased Pencils from the PRC involved the valuation of a material input for the subject merchandise, whereas in the instant case, it is the subject merchandise itself that is being valued. Second, the Cased Pencils from the PRC record did not contain any surrogate values for the specific material input, so the choice for a surrogate value had to be made between two similar products, one of which was an obvious closer match to the input being valued.<sup>93</sup> This is in contrast to the instant case, where the GDLSK respondents argue that comparable garlic bulbs are being produced in India, and the petitioners have not provided reliable evidence to prove otherwise. Finally, the GDLSK respondents argue that part of the rationale behind valuing the input in a non-economically comparable country in Cased Pencils from the PRC was the reasonableness of the value itself. Specifically, in Cased Pencils from the PRC, the Department stated that it was inappropriate to value a less similar input when the value for that input was so significantly higher than the value for a more similar input that happened to come from a country that was not economically comparable to the PRC. In other words, in Cased Pencils from the PRC, the Department determined that using a country at a higher level of economic development did not improperly inflate the normal value calculation. The GDLSK respondents argue that Cased Pencils from the PRC differs from the instant case because the proposed Mexican garlic values are considerably higher than any fresh garlic value from any economically comparable country. They further argue that the most likely cause for this inflated price is not that the garlic is of greater quality but rather that Mexico's GNI is over five times greater than the PRC's GNI and over ten times greater than India's GNI.

The GDLSK respondents and Ziyang further argue that the declaration from Jon Vessey attesting to the similarities between Mexican and Chinese garlic should be viewed with skepticism, given

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<sup>91</sup> Shanghai LJ and Trans-High note that Mexico is listed as the 20<sup>th</sup> largest producer in the world during the POR. See Surrogate Country Selection Memorandum at Attachment 1.

<sup>92</sup> See Notice of Final Results of Antidumping Duty Administrative Review: Freshwater Crawfish Tailmeat from the People's Republic of China, 67 FR 19546 (April 22, 2002), and accompanying Issues and Decision Memorandum at Comment 7 ("Crawfish").

<sup>93</sup> See Cased Pencils from the PRC, 59 FR 55629.

Vessey's vested interest as a petitioner and contradictory comments made by the petitioners on the same subject in previous reviews. Specifically, Ziyang points out that in a previous segment of this case,<sup>94</sup> the petitioners highlighted the differences between the stronger flavored Mexican Chileano variety of garlic (which comprises 75-80 percent of Mexican garlic production) and that grown in the United States and the PRC, stating that "Chileano garlic is not grown at all in the PRC, nor has Chileano garlic from the PRC ever been sold in the U.S. market."<sup>95</sup> Ziyang concludes that "(t)he fact that the petitioners highlighted the differences between Mexican garlic and Chinese/U.S. garlic in the new shipper review but now is attempting to highlight the comparability between Mexican and Chinese/U.S. garlic reflects the self-serving nature of the petitioners' declarations in both reviews." Ziyang also points out that Vessey's declaration does not specify what regions in Mexico and type of Mexican garlic he has experience with, or whether this garlic was sold domestically in Mexico or exported. Thus, it is impossible to determine how accurate Vessey's statement is in relation to total Mexican garlic production without further inquiry by the Department.

In addition, the GDLSK respondents also argue against the petitioners' theory that the decline of Mexican exports to the United States as a result of the surge of Chinese imports necessarily makes the two products highly comparable. The GDLSK respondents state that the decrease in Mexican imports was a natural loss of market share due to the PRC's entrance into the U.S. market. The GDLSK respondents further counter that the substantial bilateral trade in garlic seed between Mexico and the United States is not surprising given the North American Fair Trade Agreement, and argue that it is not evidence that can be used to prove the product comparability of Mexican and Chinese garlic.

The GDLSK respondents also state that the Mexican import data are unreliable and refuted by other information on the record. First, the GDLSK respondents point out that although the petitioners stated that Mexico has imposed a phytosanitary ban on Chinese garlic since the early 1990's, in 1998, U.S. customs officials found that 23 percent of sampled Mexican garlic was actually Chinese garlic.<sup>96</sup> Also, the GDLSK respondents point out that PRC export statistics show that 420,140 kilograms were exported to Mexico during the POR, which is a direct contradiction to the Mexican import data, and contradicts the petitioners' arguments that Mexican import values could not be distorted by the presence of low-priced Chinese garlic.

FHTK and Ziyang further argue that the phytosanitary ban and the lack of Chinese garlic in the Mexican market raises significant questions about the non-market forces that may be controlling the Mexican garlic market, given the dominant presence of Chinese garlic in the world

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<sup>94</sup> Ziyang cites to the new shipper review of Clipper Manufacturing, Ltd. See Fresh Garlic from the People's Republic of China: Final Results of Antidumping Administrative Review and Recession of New Shipper Review, 67 FR 11283 (March 13, 2002).

<sup>95</sup> See Ziyang's January 17, 2006, submission (copy of the petitioners' January 22, 2002, submission, Exhibit 1)

<sup>96</sup> See GDLSK Respondents 2<sup>nd</sup> Surrogate Value Submission Rebuttal, dated January 17, 2006, at Exhibit 2.

marketplace. FHTK argues that the lack of Chinese garlic in the Mexican market inflates the price of garlic so that it is aberrationally high, as evidenced by the fact that the price of garlic is approximately four times greater than prices in most other countries, particularly in Asia.

Finally, the GDLSK respondents also state that the petitioners' proposed alternative source to value garlic bulb (*i.e.*, Mexican domestic SECOFI data) was rejected by the Department in the Preliminary Results, and should not be used in the final results since there is no reason to justify abandoning India as the surrogate country in favor of Mexico.

**Department's Position:** We find that the subset of the Agmarknet data which reflects values for Indian domestic garlic identified as "China" variety to be the best available information to value the garlic bulb. Using this data, we calculated a weighted-average price of 22.91 rupees per kilogram to value the garlic bulb for the final results. In choosing the most appropriate surrogate value, the Department considers several factors, including the quality, specificity, and contemporaneity of the source information.<sup>97</sup> Stated differently, the Department attempts to find the most representative market-based value in the surrogate country.<sup>98</sup> The Department prefers to rely on publicly available data, when it is available<sup>99</sup> and undertakes this analysis on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry.

In the Preliminary Results of the instant reviews, the Department used Indian import statistics to value the intermediate product, raw garlic bulb, because in our preliminary analysis we found this source to be the best publicly available data on the record for this valuation.<sup>100</sup> In the Preliminary Results, we stated, "{b}ecause the Department applied an intermediate methodology, we sought foremost to identify the best available surrogate value for the garlic *bulb* input to production, as opposed to identifying a surrogate value for garlic *seed*. Many of the data sources put on the record by respondents, although intended for garlic seed, could apply to valuation of the garlic bulb as well."<sup>101</sup> Prior to the Preliminary Results, two sources of Indian domestic price

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<sup>97</sup> See, e.g., Glycine from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 70 FR 47176 (August 12, 2005); see also Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review, 67 FR 72139 (December 4, 2002), and accompanying Issues and Decision Memorandum at Comment 6 ("Garlic Decision Memorandum").

<sup>98</sup> See Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms from the People's Republic of China, 66 FR 31204 (June 11, 2001), and accompanying Issues and Decision Memorandum at Comment 5 ("Mushrooms from the PRC").

<sup>99</sup> See, e.g., Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, and Final Partial Rescission of Antidumping Duty Administrative Review, 66 FR 20634 (April 24, 2001) ("Crawfish from the PRC"), and accompanying Issues and Decision Memorandum at Comment 2.

<sup>100</sup> See Memorandum to the File entitled "Factors Valuations for the Preliminary Results of the Administrative Review and New Shipper Reviews," dated November 10, 2005 at page 6.

<sup>101</sup> Id. at page 3.

information were placed on the record – the petitioners placed NHRDF price data for garlic seed on the record, and FHTK and Ziyang placed Agmarknet price data on the record. The Department analyzed both sources for their suitability to value both seed and bulb.<sup>102</sup> For the Preliminary Results, we found that the NHRDF data, while appropriate for valuing garlic seed, were not appropriate for valuing garlic bulb. The Department found that the Agmarknet data were contemporaneous and publicly available, but declined to use the data because, in the aggregate, the data appeared to only reflect prices of the small-bulb garlic sold in the domestic Indian market. We also noted that we could not determine whether the Agmarknet price data was exclusive of taxes.<sup>103</sup> Absent other appropriate Indian data on the record to value garlic bulb, the Department used Indian import statistics to value the intermediate product for the Preliminary Results and invited interested parties to submit publicly available information to value the garlic bulb for consideration for the final results. See Preliminary Results at 70 FR 69950.

For the final results, we examined the additional surrogate value information with respect to garlic bulb that was placed on the record of these reviews by the interested parties to these proceedings following the Preliminary Results. Also, the Department placed additional information on the record from the Agmarknet Internet website <<http://agmarknet.nic.in>>, including contextual information on the Agmarknet project, explanatory information on the Indian wholesale markets supplying data to the Agmarknet project, and an electronic database of Agmarknet garlic prices and quantities for the POR.<sup>104</sup> Based on our analysis of this information in its entirety, other bulb value information on the record, and the parties’ comments, we find that the Agmarknet domestic data is the best publicly available source on the record to value the garlic bulb for the final results, in accordance with section 773(c)(3) of the Act. Specifically, we find the subset of the Agmarknet data which reflects values for Indian domestic garlic identified as “China” variety to be the most appropriate information available to value the garlic bulb for the reasons outlined below.

Evidence placed on the record by the petitioners following the Preliminary Results included a market research report dated June 2003 that was originally submitted on the record of the 2001-2002 administrative review of fresh garlic from the People’s Republic of China.<sup>105</sup> The Market Research Report, commissioned by the petitioners, provides information on fresh whole garlic in India, including among other things, developments in the Indian garlic industry, an overview of garlic production in India, and garlic varieties grown in India. Because the information contained in this report is dated June 2003, the information is contemporaneous with the POR of the current reviews.

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<sup>102</sup> Id. at page 5.

<sup>103</sup> Id. at page 7.

<sup>104</sup> See Memorandum to All Interested Parties entitled “Opportunity for interested parties to comment on publicly available information to value garlic bulb for the final results of review” dated March 22, 2006.

<sup>105</sup> See Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 69 FR 33626 (June 16, 2004).

Our examination of the information contained in the Market Research Report points out that the garlic cultivation in India is carried out in “long-day” (i.e., above 30 degrees north latitude) and “short-day” (i.e., below 30 degrees north latitude) agro-climatic zones.<sup>106</sup> The “long-day” zone is characterized by longer periods of sunlight, which facilitates bulb formation and development.<sup>107</sup> As a result, garlic bulbs produced in these zones are relatively larger than ones produced in the “short-day” zones, where sunlight is available for a shorter period and consequently, and the garlic bulbs are smaller.<sup>108</sup> While most of the major garlic-producing states are located in the “short-day” agro-climatic zone, there is information indicating that large-bulb garlic is increasingly being cultivated in the “long-day” hill regions of India where newer, high-yielding garlic varieties are gaining popularity in select growing areas throughout the country.<sup>109</sup> According to the Market Research Report, garlic production in the “long-day” zones in India increased significantly from the 2001-2002 period (i.e., around 40,000 metric tons) to the 2002-2003 period (i.e., around 70,000 metric tons) especially due to larger scale cultivation of the Agrifound Parvati variety<sup>110</sup> that is similar in many ways to the large-sized Chinese garlic.<sup>111</sup> Specifically, as one of the three varieties selected in previous segments of this proceeding to value garlic seed, “Agrifound Parvati is a clonal garlic believed to be of Chinese genetic origin that was developed by NHRDF and is the closest variety (in terms of genetic origin, specifications, etc.) to Chinese garlic.”<sup>112</sup> The use of such clonal varieties, developed mainly by NHRDF, are increasing in certain areas in India due to the efforts of NHRDF and other institutions and this development is in sharp contrast to the rest of the country where local varieties dominate.<sup>113</sup> We, therefore, find that there is sufficient evidence on the record to support the assertion that while smaller local varieties remain the predominant type of garlic grown in India, large-bulb garlic – similar to that grown by the PRC respondents– is being grown in various parts of India and is beginning to make inroads vis-a-vis the locally cultivated, small-bulb Indian varieties.<sup>114</sup>

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<sup>106</sup> See Market Research Report at page 10.

<sup>107</sup> Id. at page 11.

<sup>108</sup> Id.

<sup>109</sup> See the petitioners’ January 5, 2006, Surrogate Value Submission at Attachment 33 (“Market Research Report”), pages 4-5, and 11.

<sup>110</sup> The Department has determined Agrifound Parvati to be one of the three varieties of garlic that match the subject merchandise in terms of bulb diameter (45-65 millimeters) and number of cloves per bulb (10-14). See, e.g., 9<sup>th</sup> AR Final Results at Comment 2. See also Market Research Report at page 18.

<sup>111</sup> See Market Research Report at page 11.

<sup>112</sup> Id. at page 18.

<sup>113</sup> Id. at page 13-17.

<sup>114</sup> Id.

The Department has rejected the use of Agmarknet data to value garlic seed in previous segments of this proceeding because it appeared to reflect prices of a product that is of a quality inferior to the garlic seed used by the PRC garlic producers (i.e., garlic that is low quality and low yield). However, the information on the record and facts in this proceeding have changed significantly from previous segments because we have determined that the intermediate methodology is more appropriate than the standard practice of valuing self-produced upstream FOPs which has been the methodology used in prior reviews. For a complete discussion, see the Department's position to Comment 1. Thus, our objective here is to find the best available surrogate value to value garlic bulb (i.e., the intermediate product), as opposed to previously identifying the most appropriate surrogate value for garlic seed. The GDLSK respondents are correct to note that the yield of the garlic (i.e., high-yield versus low-yield) is only relevant in the valuation of garlic seed, and not to the valuation of the finished bulb. In this case, the main distinguishing characteristic is the large size that is typical of the Chinese garlic exported by the respondents to the United States during the POR that the Department has previously characterized as "high-quality" garlic. While the GDLSK respondents argue that "high-quality" is a matter of taste and that Indians may prefer the smaller-sized garlic, the issue remains that we are seeking to value large-sized garlic bulb because this is the primary characteristic that distinguishes the type of garlic exported by the PRC respondents from the majority of garlic sold in India. Accordingly, in light of the fact that we are less concerned with the ultimate yield of the garlic seed, and more concerned with the size of the garlic bulb alone, the Department re-examined all sources on the record, regardless of whether we rejected such sources for the valuation of seed in previous segments of this proceeding.

In our review of all information pertaining to Agmarknet data, we note the following points. First, the database represents daily garlic bulb prices from wholesale markets in 21 out of 28 Indian states plus the National Capital Territory of Delhi. Therefore, we find that Agmarknet data are broadly representative of garlic bulb prices throughout India as noted by several respondents. Second, the database represents market transactions covering the period November 1, 2003, through October 31, 2004, and therefore, we find the data to be contemporaneous with these reviews. Third, the market prices quoted for garlic bulb in Agmarknet are listed according to the following six varieties: Average, Desi, New Medium, Garlic, Other, and China. We note, however, that there are no descriptions provided by Agmarknet which define these variety categories. Fourth, there is no indication in the new information on Agmarknet placed on the record by the Department, or in the information on the record prior to the Preliminary Results, that the prices in the database are inclusive of taxes. Fifth, the Agmarknet database and supporting information are publicly available.

As noted above, there are no descriptions provided in the Agmarknet data which define the six garlic variety categories listed in the database and, therefore, we considered these variety categories in light of the other evidence available on the record of these proceedings. Based on evidence of the increasing availability of the large-sized garlic bulb in India and absent contrary information, we find it reasonable to conclude that the variety indicated as "China" is representative of the distinctively larger garlic produced by the PRC respondents. As determined by the Department in previous segments, the Chinese garlic exported to the United States by the PRC respondents is garlic that is characterized by large-sized bulbs (i.e., bulb diameter above 40

millimeters) with fewer cloves per bulb (i.e., 10-16 cloves per bulb).<sup>115</sup> In contrast, the characteristics of the garlic that is typically grown and sold in the general Indian market is predominantly smaller-sized bulbs (i.e., 20 to 40 millimeters in diameter) with a large number of small cloves per bulb.<sup>116</sup>

Given the fact that most of the garlic production in India is of the smaller-size bulb coupled with the fact that larger-sized bulb is beginning to make inroads, albeit on a smaller scale, we find it reasonable to conclude that the China variety in Agmarknet identifies a category of garlic that is distinctly different from the typical garlic produced in India (e.g., smaller-sized garlic bulbs) and would represent characteristics (e.g., larger-sized garlic bulbs) that are distinctive to the type of garlic produced in China and exported to the United States by respondents in these reviews.

Furthermore, new facts contained in the Agmarknet information placed on the record by the Department lead us to believe that these data are in fact, tax-exclusive. The information obtained from Agmarknet's website indicates that the Agmarknet project was conceived and implemented to provide Indian domestic farmers "nationwide market information for wholesale produce" in "an effort to bring rural people into the mainstream economy."<sup>117</sup> Accordingly, the Agmarknet project was established in order to "facilitate collection and dissemination of market information related to better price realization by the farmers," thereby eliminating regional price distortions that might exist absent such relative information.<sup>118</sup> As the stated purpose of this information is to provide farmers with country-wide price knowledge, it would be illogical for Agmarknet to publish these prices on a tax-inclusive basis as the taxes levied in India vary widely from state to state.<sup>119</sup> To include state or other types of taxes in these data would defeat the ability of farmers in one state to compare their prices of garlic to those in another state on a consistent and accurate basis. Therefore, based on the purported goals of Agmarknet as stated in the information placed on the record by the Department following the Preliminary Results, we have reason to believe that the prices quoted for garlic in this database are tax-exclusive.

We note the petitioners' assertions that it is unclear whether the China variety relates to imported Chinese garlic and that the China variety data accounts for only 0.24 percent of the total data

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<sup>115</sup> Id. at pages 17-19. See also, Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 69 FR 33626 (June 16, 2004), and accompanying Issues and Decision Memorandum at Comment 1.

<sup>116</sup> Id.

<sup>117</sup> See Memorandum to All Interested Parties entitled "Opportunity for interested parties to comment on publicly available information to value garlic bulb for the final results of review" dated March 22, 2006, at Attachment 1.

<sup>118</sup> Id.

<sup>119</sup> See e.g., Sebacic Acid From the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 62 FR 10530 (March 7, 1997), at Comment 5.

reported.<sup>120</sup> While we do not believe that the China variety transactions reported by Agmarknet account for the entire quantity of large-sized garlic bulb sold in India during the POR, we have no reason to believe that they are not representative of market prices of large-sized garlic bulb sold in wholesale markets in India during the POR or are not representative of the type of garlic exported to the United States by the respondents. As noted above, most of the garlic production in India is of the smaller-size garlic bulb. Therefore, it is not unreasonable that the larger type of garlic characterized as China variety would appear in wholesale markets in smaller volumes than the smaller type of garlic bulb predominantly grown in India.

In addition, in arguing that Indian garlic is not inferior to Chinese garlic, the GDLSK respondents point out that an article from Hindustan Times that it placed on the record following the Preliminary Results states that imported Chinese garlic is cheaper than domestic garlic by over 400 percent.<sup>121</sup> Because we have determined that the “China” variety is comparable to garlic grown by respondents, and we are using the value for that variety only, the relative quality of the other varieties of garlic sold in India is moot. However, we note that the information from the article is not consistent with more authoritative information on the record. The price information on the record regarding imported Chinese garlic from the Indian import statistics and the prices of the domestic Indian data do not support the GDLSK respondents’ claim. A comparison of prices in the Agmarknet data shows that for the POR, the weighted-average value for “China” variety is 22.91 rupees per kilogram, which is higher than the weighted-average value of 10.92 rupees per kilogram for all varieties, which is not consistent with the information from the article.<sup>122</sup> Furthermore, the fact that Indian wholesalers pay more for the “Chinese” variety garlic than, for example, “Desi” variety garlic is consistent with our previous determinations about the nature of garlic sales. The term “Desi” is a general term referring to the Indian subcontinent. Thus, “Desi” garlic refers to a variety of garlic which, as the respondents have argued, may be more pungent than Chinese varieties, but is also mostly smaller in size. We have noted that the size of a garlic bulb often drives price in the marketplace. Thus, it is reasonable to conclude that the price for China variety reflects an accurate market value for the larger China variety bulbs.

Moreover, given the significant volume of Chinese garlic exports to India during the POR (i.e., 19,699 metric tons<sup>123</sup>), if the Agmarknet transactions, in fact, represented Chinese imports rather than domestically grown garlic, these transactions would represent more than 0.24 percent of the market transactions included in this data.

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<sup>120</sup> See the petitioners’ response to request for comments on Agmarknet data, dated March 28, 2006, at page 4.

<sup>121</sup> See GDLSK respondents’ “Second Surrogate Value Submission,” dated January 5, 2006, at Exhibit 1.

<sup>122</sup> See Memorandum to All Interested Parties entitled “Opportunity for interested parties to comment on publicly available information to value garlic bulb for the final results of review” dated March 22, 2006, at Attachment 1.

<sup>123</sup> See the petitioners’ surrogate value submission, dated January 5, 2006, at Attachment 1.

We disagree, however, with the GDLSK respondents' proposed use of a subset of Agmarknet data to calculate a value for garlic bulb. The GDLSK respondents point out that information in the Market Research Report placed on the record by the petitioners indicates that the northern states of Himachal Pradesh, Jammu & Kashmir, and Uttranchal are primarily cultivating certain high-yield varieties of garlic. Since Agmarknet provides data by state, the GDLSK respondents assert that using Agmarknet price data from these three northern Indian states would yield an appropriate value for garlic bulb. While we recognize that Agmarknet price data can be segregated by state, we do not agree with the GDLSK respondents that taking a regional subset of the data would yield the most appropriate value for garlic bulb. Rather, in calculating surrogate values, it is the Department's practice to use country-wide data instead of regional data when the former is available.<sup>124</sup> Moreover, we attempt to find the most representative and least distortive market-based value. The more broad-based the value, the greater the likelihood that the value is representative.<sup>125</sup> As such, we find that the "China" variety is more broad-based than the regional subset value suggested by the GDLSK respondents because it represents data that is country-wide and is less likely to be distorted by regional variations. Moreover, as explained above, the Agmarknet project was conceived in part, to provide Indian domestic farmers "nationwide market information for wholesale produce" in "an effort to bring rural people in the mainstream economy."<sup>126</sup> Accordingly, the Agmarknet project was established in order to eliminate regional price distortions that might exist absent such relative information.<sup>127</sup> There is no further information indicating the level of success achieved by the dissemination of price data or that potential regional price distortions have been eliminated as a result of the Agmarknet project. Absent such information regarding regional price distortions and given the Department's general preference for country-wide data, we believe that segregating regional data for use as a surrogate value is not appropriate here when country-wide data is available.

We also disagree with the petitioners' proposal to adjust the NHRDF seed price of 52.50 rupees per kilogram to obtain a garlic bulb price suitable to value the intermediate product. Namely, the petitioners propose that the Department use Mexican import data, which contain separate HTS categories for garlic "for sowing" and "other" garlic imports, to calculate what they characterize as a ratio of garlic seed price to garlic bulb price. They suggest that the Department apply this ratio (i.e., garlic seed value/other garlic value) to the NHRDF seed price to obtain a garlic bulb value of 39.76 rupees per kilogram.<sup>128</sup> Since we find that there is an appropriate domestic Indian

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<sup>124</sup> See Wuhan Bee Healthy Co., Ltd. v. United States, Slip Op. 05-142 (CIT 2005) at 5.

<sup>125</sup> See, e.g., 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 Decision Memorandum at Comment 5.

<sup>126</sup> See Memorandum to All Interested Parties entitled "Opportunity for interested parties to comment on publicly available information to value garlic bulb for the final results of review" dated March 22, 2006, at Attachment 1.

<sup>127</sup> Id.

<sup>128</sup> See the petitioners' January 23, 2006, case brief at page 13.

data source available for valuing garlic bulb specifically, we find no reason to adjust the NHRDF garlic seed values on the record in order to obtain a value for garlic bulb. As a result, we have not considered the petitioners' proposal for adjusting NHRDF seed values and, therefore, need not address the arguments made by petitioners or respondents regarding this issue.

The GDLSK respondents have also proffered a calculation to adjust a certain NHRDF seed value for Yumana Safed-3 garlic seed data drawn from Volume XXIV(I) 2004 of the NHRDF quarterly bulletin,<sup>129</sup> which contains a table showing "market yield" for Yumana Safed-3 garlic seed. The adjustment is calculated by the GDLSK respondents by taking the "net return" value (rupees per hectare) and dividing it by the "recovery after storage" (quintals per hectare).<sup>130</sup> However, as noted above, we find no reason to use values derived from seed when more appropriate values specific to bulb are available on the record. Thus, the GDLSK respondents' and petitioners' arguments related to this source are moot.

We also disagree with petitioners' arguments to disregard India as a source for a surrogate garlic bulb value. Pursuant to 19 CFR 351.408(c)(2), except for labor, the Department will normally value all factors in a single surrogate country.<sup>131</sup> In the course of this proceeding, we have determined that India is the most appropriate surrogate country for purposes of valuing the FOPs for the merchandise under consideration.<sup>132</sup> India satisfies the requirements for surrogate country selection provided under section 773(c)(4) of the Act. First, the Department has already determined that India is at a level of economic development comparable to that of the PRC in terms of per capita gross national income.<sup>133</sup> Second, as the petitioners noted in their March 31, 2005, submission, India is a significant producer of garlic.<sup>134</sup> We find no other information on the record that warrants selecting an alternative surrogate country to value the garlic bulb particularly when a surrogate value for comparable merchandise is available within India. Thus, we did not consider information on the record regarding garlic bulb values from the other four surrogate countries designated as countries economically comparable to the PRC (i.e., Indonesia, Sri Lanka, the Philippines, and Egypt).<sup>135</sup> Therefore, we need not consider or address the

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<sup>129</sup> Id.

<sup>130</sup> See the GDLSK respondents January 23, 2006, case brief at page 6.

<sup>131</sup> See 19 CFR 351.408 (c)(2).

<sup>132</sup> See Surrogate Country Selection Memorandum.

<sup>133</sup> Id.

<sup>134</sup> Information obtained from the Food and Agricultural Organization of the United Nations website confirms that India was the second largest producer of garlic between the years 2002 through 2004. See Surrogate Country Selection Memorandum.

<sup>135</sup> See "Antidumping Duty Administrative Review of Fresh Garlic from the People's Republic of China (PRC): Request for a List of Surrogate Countries" memorandum, dated January 24, 2005, which is on file in the CRU.

petitioners' or respondents' arguments regarding surrogate value data from Indonesia, Sri Lanka, the Philippines, or Egypt because we have an appropriate surrogate value from the primary surrogate country, India.

Additionally, we disagree with the petitioners that the subject merchandise constitutes an "unusual or unique" product within the meaning of Policy Bulletin 04.1 and do not find sufficient reason to leave the primary surrogate country (i.e., India) or to go outside the list of countries designated as economically comparable to the PRC for the purpose of valuing the intermediate product. Therefore, we find the arguments made for and against using surrogate value data from Mexico by the petitioners and respondents to be moot.

Consistent with the Department's usual practice in calculating surrogate values,<sup>136</sup> we have taken a weighted average of the "China" variety Agmarknet price data. Thus, we have calculated a weighted average price of 22.91 rupees per kilogram to value garlic bulb for the final results. For further details on the calculation, see Memorandum to the File entitled "Factors Valuations for the Final Results of the Administrative Review and New Shipper Reviews," dated April 26, 2006.

### **Calculation of Surrogate Wage Rate**

**Comment 3:** The GDLSK respondents urge the Department to derive the surrogate labor rate from the publicly available, country-wide wage rate data from India. The GDLSK respondents argue that the Department's policy of calculating a surrogate value for labor using data from numerous countries runs contrary to the basic tenets of the NME methodology. The GDLSK respondents argue that to be consistent with the major tenets of the NME methodology, the Department should calculate a wage rate based on the wage rate data from the surrogate country, in this case India, rather than on data from a basket of countries. The GDLSK respondents contend that in this instance, the applied surrogate wage rate of \$0.97 per hour is 400 percent higher than the actual Indian labor rate of \$0.23 per hour. Contesting the validity of the Department's regulations that require the use of this calculated wage rate, the GDLSK respondents dispute the stated reasoning behind the Department's regression wage rate analysis. First, the GDLSK respondents argue that using a basket of countries that includes non-comparable source countries and excludes more comparable low-wage countries cannot yield a "more accurate" surrogate labor rate for the PRC. The GDLSK respondents further argue that inclusion of the non-comparable countries in the regression analysis is contrary to sections 773(c)(4)(A) and 773(c)(4)(B) of the Act, which, respectively, instruct that surrogate values be derived from economically comparable countries, and countries that are significant producers of comparable merchandise. The GDLSK respondents state that, pursuant to this statutory requirement, the Department has identified six countries as being "economically comparable" to the PRC, and from this list, the Department chose India as the primary surrogate country.

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<sup>136</sup> See, e.g., Saccharin from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 7515 (February 13, 2006), and accompanying Issues and Decision Memorandum at Comments 5,7, and 10.

In addition, the GDLSK respondents argue that the Department's methodology violates the Act's requirement that surrogate values be taken from countries that are significant producers of comparable merchandise, and allege that there is no record evidence suggesting that Germany, Norway or numerous other countries used to derive the \$0.97 labor rate are significant producers of garlic. Citing Chevron U.S.A. v. Natural Resources Defense Council, 467 U.S. 837, 842-43, *reh'g denied* 468 U.S. 1227 (1984), the GDLSK respondents state that a regulation cannot stand if it is "arbitrary, capricious, or manifestly contrary to the statute." They suggest that the Department's assertion that its regression analysis achieves greater accuracy simply because it employs more countries does not provide a valid justification for disregarding the plain language of the Act.

Furthermore, the GDLSK respondents question the Department's propensity to "make errors in its highly complicated regression analysis calculation," and they find little support for the Department's assertion that this methodology provides greater predictability. The GDLSK respondents believe that "common sense shows that using the published country-wide labor rate from the primary surrogate country would afford predictability since this information is published on a regular basis and is readily available to all parties."

The GDLSK respondents also argue that the Department's NME methodology is predicated upon the theory that economic data from the PRC are unusable because the economy is not market-driven and are therefore unreliable, but the Department's labor calculation multiplies the PRC's per-capita GNI by the results of the regression analysis. Thus, the GDLSK respondents argue that the Department's methodology for determining a surrogate wage rate for the PRC incorporates as an integral part of its calculation the "unreliable" GNI data from the PRC that necessitated the use of the NME methodology and allege, therefore, that it is in conflict with the Department's entire surrogate value methodology.

Notwithstanding the arguments above, the GDLSK respondents argue that should the Department continue to use its regression-based wage rate analysis, it should revise its 2003 calculation to include all market economy countries for which a) per-capita GNI data for 2003 are available from the 2005 World Development Indicators, and b) wage data are available from the Yearbook of Labor Statistics 2004 on the International Labor Organization's ("ILO") website. The GDLSK respondents claim that the Department's 2003 data set for the wage rate calculation excluded 14 countries without providing an explanation for these exclusions. Quoting the Notice of Final Rule Making: Antidumping and Countervailing Duties, 62 FR 27,367 (May 19, 1997), the GDLSK respondents state that in this notice, the Department justified the use of the regression-based methodology by saying that "more data is better", therefore, the regression-based methodology will "lead to more accurate results." The GDLSK respondents contend that the omission of 14 countries directly conflicts with this justification. Also, the GDLSK respondents state that the Department's methodology purports to calculate a "worldwide" relationship between wages and GNI, if 14 out of the 66 countries whose data are published in the same sources used by the Department were excluded, the calculation cannot be said to be "worldwide." Furthermore, the GDLSK respondents state that the Department's error of excluding 14 countries cannot be explained away by arguing that its choice of 52 countries is a random sampling. The GDLSK respondents state that the record evidence in the Department's

website indicates that these countries were not excluded randomly, because they were disregarded without explanation in prior years as well.

Dong Yun states that in calculating the surrogate labor rate, the Department included the most industrialized and advanced countries in the world. Dong Yun contends that the inclusion of these countries does not comply with the Department's obligation under the Act to use data from countries at a similar state of economic development. Also, Dong Yun states that there is no justification to use countries at a comparable economic level of development for every FOP except for labor. Dong Yun argues that, where the Department continues to use the regression-based analysis, the Department should derive the surrogate labor wage rate using only those countries at a level of economic development comparable to that of the PRC.

**Department's Position:** The Department's 1996 proposed and 1997 final regulations both state that the agency will use regression-based wage rates reflective of the observed relationship between wages and national income in market economy countries. See Antidumping Duties; Countervailing Duties Part II, 61 FR 7308, 7384 (February 27, 1996) ("Proposed Rule"); Antidumping Duties: Countervailing Duties, Part II, 62 FR 27296, 27367 (May 19, 1997) ("Final Rule"). In substance and in practice, the Department's final regulation and regression methodology reflect the observed global relationship between wages and national income in market economy countries. Due to the variability of wage rates in countries with similar per capita GNI, were the agency to select a single surrogate country, or even a small group of surrogate countries, to value labor wage rates, the result would vary widely depending upon the economically comparable countries selected. See Proposed Rule at 7345. Thus, the regulations, as implemented, provide for a more accurate and more predictable result by utilizing data from multiple countries. See Proposed Rule at 7345; Final Rule at 27367.

When formulating its regulation, the Department determined not to rely on the sole wage rate from the selected surrogate country because while per capita GNI rates and wages are positively correlated, there is great variation in the wage rates of the market economy countries the Department typically treats as being economically comparable. See Proposed Rule, 61 FR at 7345. Labor, as a factor, is available in every country. However, many factors can greatly influence its average wage rate, including, but not limited to, that country's government's immigration, welfare and general wage support programs. Thus, two neighboring countries, with similar economies, can have very different average wage rates. For example, the Department considers both India and Egypt to be economically comparable to the PRC; however, India has a wage rate of \$0.23 and Egypt has a wage rate of \$0.98. To avoid such variability in results, the Department's regulation directs the Department to use what is essentially an average of the wage rates in a wide range of market economy countries, rather than have the result depend on which economically comparable country happens to be selected as the surrogate. Therefore, because labor data covering multiple countries are obtainable, the Department finds that its regression methodology, based on data from a wide range of market economy countries, enhances the accuracy, predictability and stability of the wage rate.

Similarly, due to the variability in wage rates as correlated with GNI, relying on only a small subset of countries comparable to the PRC would not render a meaningful result for two reasons.

First, relying on only wage rates from countries determined by the Department for surrogate country selection purposes to be comparable to the PRC (a data set consisting of five to six countries), would not provide the Department with a sufficiently large data set to conduct a reliable regression analysis. Second, conducting the regression analysis on a subset of comparable countries would return results limited only to those countries, and not the broader set of market economies contemplated by the Department's regulation.

Therefore, the Department's regulation is fully consistent with section 773(c)(4) of the Act, which allows for the Department to use prices or costs in one or more market economy countries. See Proposed Rule at 7345. The Department's regression methodology is a permissible means of determining the observed relationship between income and wages using market economy country data that, in aggregate, when applied to the NME's income, produce a factor that reflects market economy wage rates at a comparable level of economic development.

When the Department issued its Proposed Rule, and then its final regulations, following notice and comment procedures, it did not contemplate that all countries collectively used in the Department's regression analysis to determine a wage rate would be required to be significant producers of comparable merchandise from comparable economies in every case. Such a requirement would obviate the purpose of the Department's regulation concerning wage rates. In this respect, in proposing and implementing section 351.408(c)(3), the Department determined that in calculating wage rates, an analysis different in some aspects from valuing other FOPs was warranted in light of its concerns about wide variances in wage rates between comparable economies. The Department's final wage rate regulation was also informed by its use of labor in all antidumping duty calculations, and the existence of a labor market in every economy, which obviates the necessity that the included countries be significant producers of the product under investigation or review.

The Department's regression methodology permits the agency to determine wage rates upon a consistent basis across many countries that is predictable and reasonable. The GDLSK respondents' arguments and offered alternatives seek to undermine the predictable nature of that analysis. The Department has therefore rejected their suggested alternatives.

The GDLSK respondents have expressed their preference for these reviews that the Department use Indian data to calculate a wage rate. However, as explained above, the use of data from a single country would be inconsistent with the agency's regulations and practice. The claim of the GDLSK respondents that the agency must only choose wage rates derived from a country that is a significant producer of comparable merchandise also seems inconsistent with the broad collection of data which the Department prefers in its regulations and practice for measuring this particular FOP. Moreover, as discussed above, the importance placed on the significant producer criterion by the GDLSK respondents is misplaced. The Department's valuation of labor according to 19 CFR 351.408(c)(3) obviates the need for this criterion for labor.

The GDLSK respondents have also expressed a preference for the Department's inclusion of all countries for which the requisite data are available in its regression analysis. The Department's 2005 calculation of expected NME wage rates for 2003 relies on a basket of countries that is the

same as that used for the past several years, and is sufficiently robust to conduct a meaningful regression analysis. Recalculating the Department's regression analysis using a wholly different basket of countries would amount to a significant change in the Department's current methodology. The Department has established a public notice and comment process under which it is currently considering potential changes to its methodology for the calculation of expected NME wages. See Expected Non-Market Economy Wages: Request for Comment on Calculation Methodology, 70 FR 37761 (June 30, 2005).

Thus, the Department has determined, for the final results of these reviews, that the appropriate surrogate value for the wage rate for the PRC respondents continues to be the wage rate of \$0.97/hour that was calculated using the Department's regression-based methodology that can be found on import administration's website: <<http://ia.ita.doc.gov>>.

#### **Double Counting of Selling Expenses, Profits, Land Cost, Packing or Processing Costs**

**Comment 4:** Trans-High and Shanghai LJ urge the Department to eliminate any amount attributable to selling expenses or profit from the surrogate value of garlic bulbs should the Department decide to continue to use the intermediate input methodology for the final results. Trans-High and Shanghai LJ state that their producers, Yun Feng and San Li, did not purchase any garlic bulbs from unaffiliated suppliers, and that they grew all the garlic that they processed into subject merchandise. Thus, Trans-High and Shanghai LJ argue that their producers did not incur any profit or selling expenses on the garlic that they transported from the fields for further processing.

Dong Yun also urges the Department to reduce the surrogate value for garlic bulbs by the values for selling expenses and profit included in the surrogate financial statements if the Department decides to continue to use the intermediate input methodology. Dong Yun argues that it grows its own garlic, and only the processed final garlic product incurs selling expenses and generates profit. Additionally, Dong Yun urges the Department to deduct a value for land cost from the surrogate value for garlic bulb. Dong Yun argues that land cost is an indirect expense that is typically included in "overhead" in the surrogate financial statement.

GDLSK respondents state that since the Department's surrogate value used in the Preliminary Results for the intermediate input is a price for garlic that is fully processed and packed for export to India, the addition of amounts for factory overhead, SG&A, profit, and packing or processing costs results in an impermissible double-counting of these expenses and improperly inflates normal value.

**Department's Position:** Based on our analysis of the garlic bulb values and related information on the record, we no longer find the Indian import statistics to be the most appropriate source to value the intermediate product for the final results.<sup>137</sup> Rather, as discussed in Comment 2 above, the Department has determined the average price of the "China" variety in the Agmarknet data to

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<sup>137</sup>See Comment 2 for further information regarding the surrogate value for garlic bulb applied in these final results.

be the most appropriate information for valuing the garlic bulb for the final results.<sup>138</sup> Therefore, the applicable analysis as to whether the addition of amounts for packing or processing costs, selling expenses, and financial ratios may have resulted in a double counting of these expenses applies to the Department's use of Agmarknet data to value garlic bulb. We find that our use of the Agmarknet data to value the garlic bulb, as discussed below, does not result in double counting of any expenses alleged by the GDLSK respondents, Trans-High, Dong Yun, and Shanghai LJ (collectively, "respondents") and therefore, does not improperly inflate normal value of either peeled or fresh bulb—the two products shipped by respondents in these reviews that are subject to the scope of the antidumping duty order on fresh garlic from the PRC.

Agmarknet data represents, among other commodity products, India-wide domestic wholesale prices of garlic. Information on the record included in the Market Research Report states that "garlic is *always* sold at the wholesale level in whole bulb form and there is no wholesale trade whatsoever in peeled garlic. This is so since almost all Indian households peel garlic at home prior to cooking since this is perceived to retain its freshness and flavor."<sup>139</sup> Based on this information, which is contemporaneous with the POR and applicable to garlic sold in India during that period, we believe that none of the type of packaging or processing inputs used by the respondents for their exports of peeled garlic (e.g., jars, lids, antiseptic, labor attributed to peeling garlic skins, etc.) are included in the garlic bulb prices quoted by Agmarknet. Thus, we find that the use of Agmarknet data to value the garlic bulb does not result in double counting of packaging or processing costs for peeled garlic that is subject to the scope of the antidumping duty order on fresh garlic from the PRC.

Similarly, we do not find that the use of Agmarknet data results in double counting packaging or processing costs for fresh garlic bulb exported to the United States by respondents during the POR. Information from the same report also states that, "there is no repackaging involved at either the wholesale or retail level."<sup>140</sup> Furthermore, the report states that the sale of garlic in either pre-packaged cartons or containers is non-existent in India.<sup>141</sup> Thus, because the Agmarknet prices are for garlic bulb sold domestically in India, any packaging, if used, would not be equivalent to the type of packaging used for export shipments of fresh garlic bulb. For example, packaging for fresh bulb typically includes a box that may contain mesh bags holding three garlic bulbs or a box that contains large mesh bags holding 25 or 30 pounds of garlic. The type of packaging required for export would have to be sturdy enough to protect the contents from bruising, damage or spoilage that could occur during the transport of such items for lengthier periods of time than those required for garlic that is sold domestically. As such, the addition of the packing required for export shipments of fresh garlic are completely different from that used for domestic sales of garlic sold in India. Therefore, we find that the addition of

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<sup>138</sup>Id.

<sup>139</sup>See Market Research Report at page 20.

<sup>140</sup>Id.

<sup>141</sup>Id.

these inputs, as reported by respondents, does not result in double counting because they are not included in the surrogate value for garlic bulb applied in the calculation of normal value for the final results.

We recognize further that information on the record indicates that the intermediate product is sold in jute/hessian bags in wholesale markets in India. This is based on information contained in the Market Research Report which states that, in India, “garlic is packed in jute bags of 40-60 kilograms at the farm level itself.”<sup>142</sup> The Market Research Report does not indicate, however, whether the jute bags included with wholesale purchases of garlic are recycled, disposed of, or otherwise used for a different purpose. On the other hand, information provided by the respondents in these reviews indicates that in the PRC, bags or sacks are typically used to transport garlic from the field to dry or cold storage, but that these bags are then recycled. The Department believes that the bags used by the PRC respondents are similar to the bags included with the sales of garlic in the wholesale market in India. Therefore, it appears that the price for the intermediate product in India possibly includes a cost for bags while in the PRC it does not.

The Department does not believe, however, that an adjustment would account for this difference and would, in fact, be inappropriate. The Department has historically treated the cost of jute/hessian bags as overhead expenses when previously using the reported FOPs of respondents in these reviews. This is because we used fully integrated surrogate financial companies to value SG&A and overhead expenses. Thus, the Department presumed that respondents’ integrated growing activities, including the cost of a bag used to transport the input from field to storage, would have been covered by the overhead amount derived from the surrogate companies’ financial statements.

However, as we explained in the Preliminary Results, the Department is now using financial statements derived from non-integrated surrogate companies. This means that the overhead expenses contained within these financial statements most likely would not include all of the indirect expenses associated with the growing and harvesting of the intermediate product including the bags used to transport and store the garlic bulbs. Thus, because we have used non-integrated companies’ financial statements, we have not treated jute/hessian bags as overhead expenses in the PRC respondents’ calculations. Any adjustment, therefore, to the intermediate value to “offset” for recycled/reused bags would be inaccurate because no expenditure for the jute/hessian bags is currently accounted for in the Department’s calculations. Accordingly, we find it inappropriate to adjust the garlic bulb value to reflect the inclusion or exclusion of jute/hessian bags.

The Department also disagrees with the respondents’ allegations that factory overhead, SG&A, and profit are being double counted in our normal value calculations. In the Preliminary Results, the Department determined that the intermediate product methodology is more appropriate than the standard practice of valuing self-produced upstream FOPs which has been the methodology used in prior reviews of this proceeding. Accordingly, when selecting the most appropriate

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<sup>142</sup>Id at page 20.

surrogate financial statements to derive amounts for factory overhead, SG&A, and profit, we purposely selected the non-integrated Indian tea companies that only perform an additional level of production beyond the input growing stage. In other words, we selected Indian tea companies that purchased their major input or intermediate product (e.g., green tea) for further processing into a finished product (e.g., black tea). In doing so, the Department specifically recognized the necessity to derive financial ratios from companies whose financial statements encompassed factory overhead, SG&A, and profit amounts which more accurately reflect expenses and profits earned only in conjunction with the processing and packing of an intermediate input. Specifically, the Department stated that “it is important to use financial ratios derived from a surrogate company whose financial expenses do not include upstream costs (i.e., growing costs) to avoid double counting factory overhead, selling, general and administrative expenses, and profit.”<sup>143</sup> The Department has continued to use the financial statements on the record from non-integrated tea companies which purchase an intermediate product (e.g., green tea) for further processing into a finished product to derive the financial ratios applied in the final results.<sup>144</sup> The financial ratios derived from these companies reflect only the factory overhead, SG&A, and profit expenses that are specific to the processing and packing of an intermediate good subsequent to its purchase, and not inclusive of the type of additional expenses (e.g., tractors, growing expenses, etc.) that are incurred in the production or growing stage of the intermediate product. Therefore, the Department finds that the surrogate financial ratios selected for use in these reviews appropriately encompass factory overhead, SG&A, and profit expenses that would have been incurred in the further processing of an intermediate product and not those expenses and profit amounts experienced by a fully integrated company.

This methodology of applying financial ratios from companies that most accurately reflect the experience of the PRC respondents is consistent with the Department’s practice and with our application of financial expenses in previous segments of this proceeding.<sup>145</sup> For example, in the preliminary results of the ninth administrative review, the Department applied an input-to-input normal value calculation for some respondents, and an intermediate input methodology for the remaining respondents. For those respondents for which the Department calculated normal value

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<sup>143</sup> See 9<sup>th</sup> AR Final Results at Comment 5. See also, e.g., Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 68 FR 37116 (June 23, 2003) (“Fish Fillets from Vietnam”), and accompanying Issues and Decision Memorandum at Comment 3 (use of a value of the whole fish would complement the use of the surrogate companies selected by the Department since the whole fish value would encapsulate the relevant financial information for the upstream stages).

<sup>144</sup> In the Preliminary Results, the Department used the financial statements of Limtex India Limited (“Limtex”) and Preethi Tea Industry Private Limited (“Preethi”), Indian tea companies that purchased and processed tea leaves, the major input in their finished goods. The Department did not use the financial statements of The Moran Tea Company (India) Ltd. because it appeared to grow the majority of its raw materials, and its financial statements would accordingly reflect the costs of these growing expenses. See Preliminary FOP Memorandum at page 22. For these final results, the Department is continuing to use the financial data from Limtex and Preethi.

<sup>145</sup> See, e.g., “Fish Fillets from Vietnam at Comment 3.

using the input-to-input methodology, the Department applied financial ratios derived from integrated companies (i.e., Indian tea companies that grew their own tea otherwise referred to as “green tea” and further processed this tea into a final product). For the remaining respondents for whom normal value was calculated using the intermediate input methodology, the Department chose to use financial ratios derived from non-integrated companies (i.e., those tea companies that purchased green tea rather than growing it prior to processing).<sup>146</sup> We note that, in the 9<sup>th</sup> review and also in the current reviews, the financial ratios derived from the integrated companies were higher than those derived from the non-integrated companies, because the higher ratios reflect the higher costs incurred and profits earned in producing all the inputs used to produce the final product, as opposed to just those expenses incurred in the processing of the intermediate good. Thus, because the Department is employing the intermediate input methodology to all respondents in this review, and because the financial ratios of the selected, non-integrated companies do not include factory overhead, SG&A, and profit amounts experienced in the production of an intermediate good, we find that the surrogate values applied by the Department to respondents’ normal value calculations appropriately reflect the relevant expenses and profit earned for the upstream stages of growing, and do not double count these expenses.

The Department disagrees with Dong Yun regarding land cost, which is typically included in the manufacturing overhead expenses of the surrogate financial statement. First, in the Preliminary Results, the Department did not apply a value for the land lease costs reported by respondents because we found that such costs are captured in the value of the intermediate product (i.e., garlic bulb). Second, because the surrogate financial tea companies do not grow their own tea, the financial statements of these companies do not reflect a cost for land used to grow the tea and thus, are not included as amounts in the manufacturing overhead expenses reported in these companies’ financial statements. Third, we reviewed each of the line items listed in each of the Indian surrogate producers’ financial statements, and contrary to Dong Yun’s assertion, determined that none of the surrogate tea companies reported an expense for land. For example, there were no line items for land lease expenses and there were “zero” amounts reported for depreciation of land. Thus, we find that contrary to Dong Yun’s argument, there are no land costs included in the “overhead” items listed in the surrogate tea companies’ financial statements and thus, we have not double counted these costs. Accordingly, we find that the surrogate values selected to value the garlic bulb and the financial ratios applied to the respondents’ calculation do not result in double counting.

### **By-Products**

**Comment 5:** In the Preliminary Results, the Department did not grant a by-product offset to reflect the revenue generated by the sale of scapes because the intermediate input surrogate value should already account for any revenue offsets in the price.

Shanghai LJ, Dong Yun, and Trans-High argue that even if the Department chooses to use an intermediate input approach in the final results of these reviews, the Department should not ignore the benefit obtained from the sale of the by-product that is produced while growing the

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<sup>146</sup> See Preliminary FOP Memorandum at page 17.

subject merchandise. Therefore, these respondents argue that the Department should grant this offset for the final results.

**Department's Position:** We are not granting a by-product offset in our calculations of the respondents' normal value because the intermediate bulb price already includes any revenue offsets incurred by the surrogate price source. Because the by-product offset for sprouts is incurred at the growing stage and we are not using the respondents' reported growing FOPs to build a cost for the growing stage of garlic, we believe that the surrogate value that we have selected for use as the surrogate value for the intermediate product (i.e., the garlic bulb) represents the total value from the growing stage including any offsets; in other words, this bulb value incorporates any offsets incurred by the grower during that stage. Therefore, we are not granting a by-product offset for the garlic sprouts sold because that would double count any offsets taken into account in the pricing strategy of the growers included in the Indian Agmarknet data used to value the intermediate product.

### **Valuation of Foreign Brokerage and Handling**

**Comment 6:** In the Preliminary Results, the Department averaged two sources to derive a surrogate value for foreign brokerage and handling 1) Essar Steel's data from hot-rolled steel flat products from India<sup>147</sup> and 2) Pidilite Industry's data from carbazole violet pigment 23 from India.<sup>148</sup>

The GDLSK respondents argue that the Essar Steel data are contemporaneous with the POR while the Pidilite data are not contemporaneous with the POR. The GDLSK respondents state that following the Preliminary Results they submitted additional contemporaneous data (i.e., overlaps with nine months of the POR) from Agro Dutch's response in the antidumping duty administrative review of certain preserved mushrooms from India for the February 2004 through January 2005 period with which to value foreign brokerage and handling.<sup>149</sup> See GDLSK respondents' Second Surrogate Value Submission at Exhibit 4.

The GDLSK respondents argue that the Department's policy is, when all other things are equal, to limit the surrogate value to data that are contemporaneous with the POR. To support their argument, the GDLSK respondents cite Anshan Iron & Steel v. United States, 159 F. Supp. 2d 714, 728 (CIT 2003) ("Anshan Iron"), where the Court rejected an argument to include less contemporaneous surrogate values stating that "This court has repeatedly recognized that Commerce's practice is to use surrogate prices from a period contemporaneous with the period of

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<sup>147</sup> See Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot Rolled Carbon Steel Flat Products from India, 67 FR 50406 (October 3, 2001).

<sup>148</sup> See Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 From India, 69 FR 67306 (November 17, 2004). See also Preliminary FOP Memorandum at 20.

<sup>149</sup> Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review, 71 FR 10646 (March 2, 2006).

investigation.” See also Shandong Huarong General Corp. v. United States, 25 CIT 834, 849 (2001) (“Shandong Huarong”) where the Court confirmed that the Department should use surrogate data that are contemporaneous with the POR.

The GDLSK respondents make further arguments with respect to the three sources of surrogate brokerage values on the record, the Essar Steel value, the Agro Dutch value, and the Pidilite value, claiming the Essar Steel value is entirely within the POR, the Agro Dutch value overlaps the POR by nine months, and the Pidilite value is entirely outside the POR. The GDLSK respondents contend that because there are contemporaneous data on the record, the Department should follow its established precedent and disregard the non-contemporaneous data from Pidilite for the final results.

The GDLSK respondents contend that the second reason to disregard the Pidilite data is that it is aberrational. The GDLSK respondents argue that while the Pidilite data consist of shipments with a total quantity of 13 metric tons resulting in a value of 6.48 rupees per kilogram, the Essar data are derived from shipments of 4,000 metric tons resulting in a value of 0.17 rupees per kilogram. The GDLSK respondents argue that it is evident that the high fees paid for the small volume of merchandise by Pidilite result in an unrepresentative and aberrational brokerage value. See, e.g. Freshwater Crawfish Tail Meat From the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review, 70 FR 58672 (October 7, 2005), which states the Department’s policy to disregard surrogate values that are aberrational when compared to other values for the same input.

Additionally, the GDLSK respondents argue that the Department’s weighted average for foreign brokerage and handling was incorrect in the Preliminary Results because it was not a true weighted-average surrogate brokerage cost. The GDLSK respondents claim that the Department calculated a weighted-average value for Pidilite and Essar separately and then combined the two values as a simple average to obtain the surrogate brokerage rate. The GDLSK respondents argue that for the final results, the Department should revise the value to be a true weighted average of the sources it uses to derive a surrogate value for brokerage and handling.

The petitioners did not comment on this issue.

**Department’s Position:** For the final results, we have used a simple average of the Essar Steel and the Agro Dutch brokerage and handling information to value foreign brokerage and handling. In determining the most appropriate surrogate values to use in a given case, the Department's stated practice is “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.”<sup>150</sup> The Department’s preference would be to use an Indian brokerage and handling value specific to fresh garlic. Secondly, our preference would be to use publicly available data that are not ranged. However, in this case, we only have an Indian brokerage and handling value specific to other products, and

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<sup>150</sup> See Policy Bulletin 04.1.

the only information that is available publicly has been ranged. We are, therefore, using this information because there is no other information available on the record of this review. Further, as the GDLSK respondents state in their administrative brief, it is our preference to use contemporaneous data when all other aspects such as quality and specificity of the source information are equal. See Anshan Iron. In this case, we find the information placed on the record by the GDLSK respondents from Agro Dutch in the 2004-2005 administrative review of the antidumping duty order on certain preserved mushrooms from India to be of a quality and specificity equal to the other data on the record. Therefore, as there are no garlic-specific brokerage and handling values on the record, the Department finds that using a simple average of Essar Steel and Agro Dutch's values achieves the most representative value, as both sources are of equal quality and are contemporaneous with the POR. Because the Pidilite data are not contemporaneous with the POR and we are not using them for the final results, there is no need to address the other argument raised about these data.

We also believe that using an average of these two values represents values for numerous transactions that are available for a range of products and minimizes the potential distortions that might arise from a single price source. One value, taken in isolation, could differ significantly when compared across a range of products, values, and special circumstances of a single transaction.

However, the Department disagrees with the GDLSK respondents' argument that the Department should weight average its calculation of brokerage and handling. The GDLSK respondents argue that we used a weighted average to calculate the surrogate values for the inputs and packaging materials and that we should also use a weighted average to calculate foreign brokerage and handling. As an initial matter, the Department finds that applying a simple average to the brokerage and handling values results in the most appropriate average value because it is the Department's practice to apply equal weight when calculating surrogate values for movement expenses using multiple products and experiences. If the Department instead weight averaged the Essar and Agro Dutch values, which are for different products and different experiences, we would imply that the experience of the Indian producer that shipped the heaviest or the most merchandise is more representative of the PRC producers' experience in this review than the Indian producer that shipped the lightest or least merchandise. See Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China, 61 FR 19026, 19039 (April 30, 1996) ("Bicycles") (In Bicycles, we found that, for the purposes of equally capturing the experiences of large and small producers, there was no basis to conclude that a weighted average of the surrogate financial ratios was more accurate than a simple average). In cases such as in this review, where we have multiple companies of varying sizes and experiences, no single experience is more representative of the actual brokerage and handling experience of all the companies subject to review. Additionally, weight is not the only factor that is considered in the determination of a brokerage and handling rate. Therefore, it is incorrect to assume that by weight averaging brokerage and handling charges incurred for shipments of different merchandise, we would be calculating a brokerage and handling expense that is more reflective of the expenses for the subject merchandise.

Furthermore, we note that in calculating weighted-average surrogate values for certain inputs and packing materials, we used publicly available import prices from Indian import statistics from the World Trade Atlas and from the [Agmarknet](#) website for the POR. Unlike the case with the Essar and Agro Dutch surrogate values, where weight averaging two company-specific values implies that the experience of a producer of one product is more representative of PRC garlic producers than the producer of another product, weight averaging the valuation of the input and packing materials using Indian import statistics yields a more representative value because these values are from the same HTS category representing the best available information on the value of the FOP used by the respondent. For further details, see Memorandum to the File entitled “Factors Valuations for the Final Results of the Administrative Review,” dated April 26, 2006 (“Final FOP Memorandum”).

### **Valuation of Ocean Freight**

**Comment 7:** The GDLSK respondents disagree with the Department’s decision in the Preliminary Results to value ocean freight using quotes obtained from Maersk Sealand. They argue that the Department has a stated policy of using a broad base of sources to calculate surrogate values in order to avoid the possible distortions of using a single source of data. The GDLSK respondents state that the Maersk Sealand price quotes are undeniably distorted because they contain significant charges not incurred by any of the respondents.

Specifically, the GDLSK respondents argue that the price quotes that the Department used in the Preliminary Results are for a route from the PRC to the United States that is unique to Maersk Sealand, and that goes through Hong Kong.<sup>151</sup> The GDLSK respondents argue Maersk Sealand charges an extra \$1,200 per container, identified as a “PRC Arbitrary Charge,” for their cargo to go through Hong Kong, and that this charge is included in every single one of the price quotes used by the Department in its surrogate value calculation for ocean freight. The GDLSK respondents state that none of the respondents that reported using market economy suppliers for ocean freight listed a similar arbitrary charge, and that there is no indication that any of the respondents paid for their freight to be shipped via Hong Kong. In addition, the GDLSK respondents have placed other information on the record which they argue confirms the distortion of the Maersk Sealand prices. Specifically, the GDLSK respondents state that rates from Descartes, an online database that lists the public tariff rates of numerous freight carriers, are much lower than those from Maersk Sealand, and are in line with quotes from another market economy carrier, Evergreen Marine, for service from Quingdao to the United States.<sup>152</sup> Thus, the GDLSK respondents conclude that Maersk Sealand’s ocean freight rates are distorted by anomalous charges and are unrepresentative of the expense actually incurred by the respondents.

The GDLSK respondents contend that the most representative and accurate source for calculating the surrogate value for ocean freight rates would be the public versions of the reported actual rates that certain respondents paid to market economy suppliers during the POR. The GDLSK

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<sup>151</sup> See GDLSK respondents’ “Second Surrogate Value Submission,” dated January 5, 2006, at Exhibit IX.

<sup>152</sup> Id.

respondents argue that these rates are fully contemporaneous with the POR and represent actual shipping costs for subject merchandise. Furthermore, the GDLSK respondents argue that, in a previous administrative review,<sup>153</sup> the Department actually rejected price rates from Maersk Sealand in favor of the publicly ranged market economy rates reported by just one respondent to calculate a surrogate value for ocean freight for the remaining respondents. The GDLSK respondents argue that it is even more compelling in the instant reviews to use respondent reported information for the valuation of ocean freight because the record contains relevant data from multiple respondents and from multiple sources. The GDLSK respondents argue that any distortions that could result from using publicly ranged data is outweighed by the much larger distortion of the arbitrary charge associated with Maersk Sealand data, which the GDLSK respondents argue are not even specific to subject merchandise. In addition, the GDLSK respondents argue that the Department derived the surrogate value for foreign brokerage and handling in the Preliminary Results from publicly ranged data taken from other proceedings. Thus, the GDLSK respondents find no reason why the Department should object to using publicly ranged data from the same proceeding, for the same subject merchandise and POR, for valuing ocean freight in the instant reviews.

The GDLSK respondents conclude that the respondent-reported market economy ocean freight purchases are the best source from which to value ocean freight. Alternatively, the GDLSK respondents also contend that the Evergreen Marine price quotes and the publicly filed rates from the Descartes database are also more suitable sources than Maersk Sealand for surrogate value purposes.

The petitioners did not comment on this issue.

**Department's Position:** We disagree with the GDLSK respondents that the publicly ranged values of the market economy prices paid for ocean freight by certain respondents represent the most appropriate source as a surrogate value for ocean freight. There are a number of sources currently available on the record from which to value ocean freight. The data suggested by the GDLSK respondents are based on proprietary information that is ranged within plus or minus ten percent of the actual data. Thus, the ranged information on the public record in this case are not accurate reflections of actual expenses charged by market economy suppliers for ocean freight because these values have been inflated (*i.e.*, ranged upward ten percent), or deflated (*i.e.*, ranged downward ten percent). As we explained in response to Comment 6 above, the Department's policy is to not use ranged data unless nothing more accurate is on the record. Furthermore, it is impossible for the Department to make any adjustments to improve the accuracy of these ranged numbers without disclosing the proprietary information from which they were derived. Section 351.408(c)(1) of the Department's regulations specifically states that "the Secretary normally will use publicly available information to value factors." Additionally, in the Policy Bulletin 04.1, the Department explains that, "in assessing data and data sources, 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

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<sup>153</sup> See 8<sup>th</sup> AR Final Results at Comment 5.

period of investigation or review, and publicly available data (emphasis added).” Further, the Department has reiterated its preference for publicly available information in recent cases<sup>154</sup> and past reviews in this case.<sup>155</sup> Thus, although we used publicly ranged information in a prior review, the Department prefers where there are publicly available sources on the record to use these sources as discussed below. In the case of brokerage and handling, there were no other contemporaneous, publicly available sources on the record from which to derive a surrogate value, so we have used ranged data.

The Department also disagrees with the GDLSK respondents’ contention that rates obtained from Descartes and Evergreen Marine are more appropriate for use in calculating the surrogate value for ocean freight. In analyzing the Descartes source, the Department discovered that there is a cost to use the Descartes database, and that this cost includes fixed monthly fees and per-minute charges.<sup>156</sup> Therefore, the Department is unable to corroborate the accuracy of the ocean freight rates submitted by the GDLSK respondents from Descartes, and does not consider Descartes to be an appropriate source from which to value ocean freight. The Department also does not consider Evergreen Marine to be the best available source from which to value ocean freight. While these price quotes do appear to be publicly available information, the Department finds that these quotes reflect “generic cargo” rates that are not as specific to the subject merchandise as other record information, as discussed further below.

The Department continues to believe that Maersk Sealand is the best publicly-available source from which to value ocean freight in the instant reviews. Maersk Sealand is a public source that has often been used by the Department in NME cases to value ocean freight.<sup>157</sup> The price quotes, with all of the inclusive charges, are actual rates charged by a market economy supplier to ship cargo from Qingdao to the United States. Further, while the GDLSK respondents have claimed that they did not incur similar fees, they have not provided any evidence that they have not incurred such charges.

However, the Department does find that the general cargo rates from Maersk Sealand are less specific to the subject merchandise than the Maersk Sealand rates for refrigerated goods that the

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<sup>154</sup> See Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags from the People’s Republic of China, 69 FR 34125 (June 18, 2004) (“Retail Carrier Bags”), and accompanying Issues and Decision Memorandum at Comment 9; Notice of Final Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol from the People’s Republic of China, 69 FR 34130 (June 18, 2004) (“Tetrahydrofurfuryl Alcohol”), and accompanying Issues and Decision Memorandum at Comment 6; and Notice of Final Results of First Administrative Review: Honey from the People’s Republic of China, 69 FR 25060 (May 5, 2004) (“First Administrative Review of Honey”), and accompanying Issues and Decision Memorandum at Comment 3.

<sup>155</sup> See 9<sup>th</sup> AR Final Results at Comment 11.

<sup>156</sup> See Descartes’ Ocean Rates Tariff Retrieval Agreement, Section 3, “Fees and Payments” (<<http://rates.descartes.com/rates/index.html>>)

<sup>157</sup> See Automotive Replacement Glass Windshields from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 70 FR 24373 (May 9, 2005), and Violet Pigment.

GDLSK respondents placed on the record in their surrogate value submission following the Preliminary Results. Where possible, it is the Department's practice to choose surrogate values that are as specific to the input being valued as possible.<sup>158</sup> Here, we find that the publicly available Maersk Sealand rates for refrigerated cargo is more applicable to the rates that the PRC respondents would be charged when shipping garlic to the United States because garlic is generally shipped in refrigerated containers. Accordingly, for these final results, the Department will use the publicly available refrigerated cargo rate quotes from Maersk Sealand that the GDLSK respondents have placed on the record<sup>159</sup> to calculate a surrogate value for ocean freight for those respondents that purchased their ocean freight from an NME supplier.

### **Valuation of Cartons**

**Comment 8:** In the Preliminary Results, the Department chose to value cartons using Indian import statistics HTS category 4819.1010. There are also domestic values on the record from four Indian box producers. See Factors Valuation Memorandum at 12.

The GDLSK respondents argue that there is record evidence that HTS category 4819.1010 includes several types of specialty boxes and other products that were shipped by air and that the majority of entries under this HTS category value does not resemble the packing boxes used by the PRC respondents.<sup>160</sup> The GDLSK respondents further argue that the Department's assertion that the import data are sufficiently specific to packing boxes is not supported by record evidence. The GDLSK respondents contend that the Indian HTS category is more than three times higher than the average of the price quotes for domestic packing boxes because the Indian import statistics include specialty boxes that were transported by air.

The GDLSK respondents contend that the Department has a choice between 1) domestic price quotes specific to packing boxes from several Indian producers and 2) distorted import data. The GDLSK respondents contend that the Department cannot continue to use the import data on the basis that the HTS category is "sufficiently specific" to the boxes used by the PRC producers without further analysis of the values on the record of these reviews and suggest that an analysis of the two values on the record reveals that the Indian import statistics HTS category is not a usable source to value cartons, thereby leaving the domestic price quotes as the only remaining value on the record. The GDLSK respondents argue that the price quotes are a more accurate reflection of the cartons used by the PRC respondents and represent country-wide prices because they reflect prices from four cities in India.

The GDLSK respondents argue that in Shanghai Foreign Trade Enterprises Co., Ltd. v. United States, 318 F. Supp. 2d 1339, 1350 (CIT 2004) the Court remanded the Department's use of Indian import statistics instead of domestic prices because the Department's explanation of its

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<sup>158</sup> See Policy Bulletin 04.1.

<sup>159</sup> See GDLSK respondents' "Second Surrogate Value Submission," dated January 5, 2006, at Exhibit IX.

<sup>160</sup> See Dong Yun's "Surrogate Value Submission," dated July 11, 2005, at Exhibit 2.

decision to use Indian import statistics was inadequately supported. See Shanghai Foreign (where the Court notes that “Commerce does not address whether the value it chose is aberrational relative to other record evidence of the market value of pig iron,” and the Department’s “decision to rely on potentially aberrational data without explanation and contrary to its own practice is not based on substantial evidence and cannot be sustained”).

Citing Hebei Metals and Mineral Import and Export Corporation, et al v. United States, 366 F. Supp. 2d 1264 (CIT 2005), the GDLSK respondents argue that the Court stated that logic and legal precedent dictate that the Department use domestic surrogate data unless there is evidence showing that the domestic data are distorted. Citing Yantai Oriental Juice Co. v. United States, Slip Op. 02-56, at 9 (CIT 2002), the GDLSK respondents contend that the Court rejected the Department’s use of import data instead of a domestic price on the record, stating that the Department failed to explain “how the use of seemingly more expensive imported coal data are the best available information.” Additionally, the GDLSK respondents argue that the Department’s rejection of domestic data runs contrary to its established preference for using domestic prices from the surrogate country rather than import values. See e.g. Pure Magnesium from the People’s Republic of China: Final Results of Antidumping Duty New Shipper Administrative Review, 63 FR 3085 (January 21, 1998).

The GDLSK respondents contend that neither the petitioners nor the Department has cited any evidence that shows the domestic pricing data on the record of these reviews are distorted. The GDLSK respondents argue, further, that the Department’s implication that the PRC respondents would import boxes, which are necessarily more expensive, instead of using boxes which are domestically available is not representative of business realities. The courts have held that the purpose of the Act is to construct the product’s normal value as it would have been if the NME country were a market economy country. See e.g. Rhodia, Inc. v. United States, 240 F. Supp. 2d 1247 (CIT 2001). Indian garlic companies have no reason to buy either more expensive imported or specialty boxes if these can be supplied domestically. Therefore, the GDLSK respondents contend that if the PRC companies were in India, they would not buy the more expensive imported or specialty boxes. In conclusion, the GDLSK respondents argue that the Department should rely on the more representative domestic pricing data and not rely on the distorted, non-specific import data to value cartons for the final results.

The petitioners did not comment on this issue.

**Department’s Position:** In determining the most appropriate surrogate values the Department’s stated practice is “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.”<sup>161</sup> The Department undertakes this analysis on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry.

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<sup>161</sup> See Policy Bulletin 04.1.

We disagree with the respondents that the price quotes that they have provided on the record are a more appropriate source for the surrogate values used to value cartons in the final results because, although the four price quotes that the GDLSK respondents suggest that the Department use are contemporaneous, they also appear to have been obtained from four Indian companies in direct response to a request for such prices. We find that these 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 lessen the possibility of manipulation of the values based on documents prepared specifically for use in trade remedy cases. No detail on the parties that requested the prices, or whether or not an affiliation existed between the requester and the Indian companies, was ever placed on the record. Without access to all the 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 accurate. Such previously non-public information is also of unknowable validity unless verification is conducted. As a general policy, the Department must be cautious in using selective price quotes. A respondent could, for example, receive ten quotes, and provide the Department with only the two or three it prefers. A respondent could also potentially influence the quote it receives from a company. There are many unknowns that accompany a price quote, so the Department does not favor the use of such information if other publicly available data are on the record. In short, unless the Department verifies such information, it will necessarily be of uncertain reliability. The necessity of undertaking this burden is avoided through the use of independently generated public information. Therefore, without further information, we cannot determine that the price quotes submitted by the respondents are publicly available and accurate.

The Department finds that the Indian HTS category 4819.10.10<sup>162</sup> represents the best available information on the record because it is publicly available data, contemporaneous, contains period-wide price averages specific to the cartons used by the PRC respondents, and is net of taxes and import duties. The Department's analysis of the trade intelligence data on the record indicates that there are many different types of boxes covered by the Indian HTS category, but that fact alone does not undermine the use of the value. An analysis of the carton values on the record reveal that it is inaccurate to try to determine the actual percentage of "specialty" boxes contained in the Indian import statistics HTS category based on the information on the record.<sup>163</sup> The trade intelligence data provided by EximKey.com contains various units of measure in the

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<sup>162</sup> In the Preliminary Results, we incorrectly cited the HTS category for cartons as 4919.10.10. Both the data used in the Preliminary Results and the final results are from the same HTS category, 4819.10.10. Although the data used for the Preliminary Results and the final results are the same, we have corrected the citation of the HTS category for the final results. The correct HTS number for cartons is 4819.10.10.

<sup>163</sup> The information supplied by Dong Yun in its July 11, 2005, submission for cartons is incorrect. At Exhibit 2, Dong Yun claims that there were only entries during two months of the POR. This is incorrect for two reasons. First, EximKey.com currently only provides data for 2004 and 2005, so it is impossible to find information for November 2003 and December 2003 on EximKey's website. Second, Dong Yun keyed the data incorrectly because the data for February 2004 attached at Exhibit 2 is for the wrong HTS category. Additionally, when the Department recreated this data run, it was able to find data for all months for the period January 2004 through October 2004.

quantity category without any further explanation. For example, some entries are on a piece basis, some are stated as a set, and some on an “NOS” basis.<sup>164</sup> See Attachment 2 of Dong Yun’s July 11, 2005, submission. Therefore, it is impossible to determine how these unit values tie in with the Indian import statistics which are reported on a per-kilogram basis. Additionally, we remove imports from the PRC from our calculation of a carton value from the Indian import statistics because the PRC is an NME country. Most of the gift boxes and “specialty boxes” referenced by the GDLSK respondents are sourced from the PRC according to the import data. Therefore, most of the gift boxes and “specialty boxes” referenced are already excluded from our calculations.

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 that the use of a value derived from the Indian import statistics for imports of polyethylene sacks and bags was preferable to the use of a value based on price quotes of Indian suppliers of plastic bags. 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. The Department acknowledged that the import category was not as product-specific as the price quotes for plastic bags. We concluded in Synthetic Indigo, however, that we were not able to determine that the quotes, which were dated anywhere from seven to ten months after the end of the POR, were representative of the range of prices for the input during the POR.

In light of the reasoning in Synthetic Indigo and the factual considerations of the current review, we find that the Indian import statistics constitute the best available information because these data are publicly available, contemporaneous with the POR, representative of a range of prices throughout the POR, and sufficiently specific to the product. By their nature, import statistics have an element of general applicability to them. Therefore, as a surrogate value they may not necessarily reflect the exact carton experience of any one respondent. Some companies may import cartons into the PRC by air, while others may not, and the Indian HTS category reflects all of these experiences, as the GDLSK respondents argue. This point alone, however, does not undermine the rationale discussed above. Furthermore, the respondents have not submitted any documents on the record of this review demonstrating that their own domestic carton suppliers did not import the products into the PRC by air. Mere allegations of facts, absent any record evidence for support of such claims, cannot be a basis for undermining the use of publicly available, contemporaneous valuation data from Indian HTS categories in this case.

Given the facts on the record, we find it appropriate to follow our practice of using import statistics when we consider that they represent the best available data. Accordingly, we have made no changes to our valuation of cartons and have used the Indian import statistics as the basis of this valuation.

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<sup>164</sup> We are unsure what “NOS” represents.

## **Valuation of Jars**

**Comment 9:** The GDLSK respondents argue that the Indian Import Statistics HTS category 3923.3090 used in the Preliminary Results to value jars is a basket category that is distorted by plastic products such as speciality hair products, slippers, and fiber glass that do not resemble the plastic jars used by the respondents' for the subject merchandise. To support their claims, GDLSK respondents cite "Trade Intelligence data" that it placed on the record to show that the category is distorted by high quantities of hair product imports.<sup>165</sup> The GDLSK respondents also contend that the air freight charges included in the Indian import statistics further distort the surrogate values. Citing Final Results of Antidumping Administrative Review: Sulfanilic Acid from the People's Republic of China, 61 FR 53711 (October 15, 1996), the GDLSK respondents argue that the Department determined that Indian import statistics reflect a CIF price (cost, insurance, and freight). Therefore, the GDLSK respondents argue that the AUV for jars, if based on the Indian import statistics, are distorted by any inclusion of prices that reflect air freight charges.

The GDLSK respondents argue that the Department should use the domestic Indian price quotes on the record that were obtained from several Indian companies and cover plastic jars with similar characteristics and dimensions to the plastic jars used by the respondents to pack subject merchandise. According to the GDLSK respondents, the domestic price quotes are the best surrogate values on the record because they are product-specific and consistent with the Department's general preference for domestic surrogate prices.

The petitioners did not comment on this issue.

**Department's Position:** We disagree with the GDLSK respondents that the Indian domestic price quotes are a more accurate source for the surrogate values for jars used by the respondents to pack fresh garlic. The four price quotes that the GDLSK respondents suggest the Department use appear to be obtained from three Indian companies in direct response to a request for such prices, which mean that they do not necessarily reflect an objective, market-based value. Further, two of the three sources submitted are not contemporaneous with the POR. We find that these price quotes are not the best information on the record of this proceeding as they do not meet the criteria for public availability, accuracy, and contemporaneity that the Department relies upon when choosing appropriate surrogate values in order to decrease the possibility of price manipulation of documents prepared specifically for use in antidumping proceedings.

In Policy Bulletin 04.1, the Department explained that "in assessing data and data sources, 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."

Section 351.408(c)(1) of the Department's regulations additionally states, "the Secretary normally will use publicly available information to value factors." Further, the Department has

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<sup>165</sup>See GDLSK respondents' surrogate value submission, dated April 11, 2005.

reiterated its preference for publicly available information in recent cases<sup>166</sup> and past reviews in this case.<sup>167</sup> The respondents in this review did not provide the Department with any information on how the submitted price quotes were obtained. As stated previously, the four price quotes that were submitted appear to be in response to a specific request for the prices. However, no detail on the identity of the party that requested the prices, or information as to whether or not an affiliation existed between the requester and the Indian companies, was ever placed on the record. Without access to all the information on the means by which these 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 accurate. Such previously non-public information is also of unknowable validity unless verification is conducted. In short, unless the Department verifies such information, the reported quotes are, alone, unreliable indicators of market values for plastic jars and lids. The necessity of undertaking this burden is avoided through the use of independently generated public information. Therefore, without further information, we cannot determine that the price quotes submitted by the respondents are publicly available and accurate.

In addition, we note that two of the four price quotes actually fall outside of the POR, and do not represent a broad market average of prices for plastic jars and lids. The three sources for the four price quotes submitted by the respondents are dated October 8, 2004,<sup>168</sup> November 6, 2004, and November 22, 2004. The Department values contemporaneity highly in selecting an appropriate surrogate value because an administrative review is limited to a particular time period and, therefore, a surrogate derived from this time period is reasonably appropriate to apply to the Department's analysis.<sup>169</sup>

Furthermore, even the contemporaneous price quotes on the record (*i.e.*, the price quotes dated October 8, 2004) still do not represent a broad market average. Four price quotes from three different companies obtained within two months could easily be subject to temporary market conditions. The Department has historically chosen to use surrogate values that reflect broad market averages and that cover a substantial time period throughout the POR instead of price data that are obtained from so isolated a time frame as to be subject to temporary market fluctuations.<sup>170</sup>

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<sup>166</sup> See Retail Carrier Bags at Comment 9; Tetrahydrofurfuryl Alcohol at Comment 6; First Administrative Review of Honey at Comment 3.

<sup>167</sup> See 8<sup>th</sup> AR Final Results at Comment 3; and 9<sup>th</sup> AR Final Results at Comment 8.

<sup>168</sup> This source contains two price quotes that are the only ones submitted by respondents that fall within the POR.

<sup>169</sup> See *e.g.*, Synthetic Indigo at Comment 11.

<sup>170</sup> 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, 68 FR 3876, (January 27, 2004).

In addition, even if we were to determine that the price quotes were publicly available, contemporaneous, and represented a broad market average of prices, we would still find them to be unsuitable surrogate values because they lack all of the information that we would need to apply them in our margin calculations. Two of the four price quotes do not indicate whether lids are included in the submitted price. The remaining two price quotes, which clearly include the price of the lid, do not separate between the price of the lid and the price of the jar. Therefore, we would not have a separate price to use for either jars or lids for those respondents for which only one of these factors is valued with a surrogate value in our calculations. Our inability to apply the price quotes to the specific calculation needs of the specific FOPs further impedes our use of these submitted values.

Furthermore, we find the GDLSK respondents' argument that the Indian import statistics HTS category is distorted by high quantities of hair product imports to be flawed. The "Trade Intelligence data" placed on the record by the GDLSK respondents to support this claim is sourced from data provided by INFODRIVEINDIA, which is a service that provides, among other things, descriptions of the items included in Indian import HTS categories. The GDLSK respondents submitted to the record a list of twelve records provided by INFODRIVEINDIA. We note that while the Indian import statistics provide all values on a kilogram basis, the INFODRIVEINDIA records are not consistently reported on a weight basis. Rather, the units of measure listed in the data records, for example, show quantities that are listed on per-piece, per-dozen, and "NOS" bases. Without the conversion factor to convert the reported unit types to a kilogram basis, respondents' contention that the HTS category is dominated by hair products is meaningless because the quantities noted for hair products are in pieces. In addition, in our efforts to corroborate this information, we found that the data available covered ten months of the POR. Within that period there were 650 records available for the HTS category at issue. As such, we cannot determine the method by which respondents selected only twelve of these entries to support its claims.

In Synthetic Indigo, the Department found that the use of a value derived from the Indian import statistics for imports of polyethylene sacks and bags was preferable to a value based on price quotes of Indian suppliers of plastic bags. We found in that review, consistent with our past practice, that 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 despite not being as product-specific as the price quotes for plastic bags. On the other hand, we concluded in Synthetic Indigo that we were not able to determine that the quotes, which were dated following the completion of the POR, were representative of the range of prices for the input during the POR.

In light of the reasoning in Synthetic Indigo and the factual considerations of the current review, we find that the Indian import statistics constitute the best available information because the data are contemporaneous with the POR, representative of a range of prices throughout the POR, and sufficiently specific to the product. By their nature, import statistics have an element of general applicability to them. Therefore, as a surrogate value they may not necessarily reflect the exact packaging experience of any one respondent. Some companies import jars and lids into the PRC

by air, others do not, and the Indian HTS category reflects all of these experiences. This point alone, however, does not supercede the fact that this information is the most contemporaneous and accurate surrogate on the record. Furthermore, the respondents have not submitted any documents on the record of this review demonstrating that their own domestic plastic jar and lid suppliers did not import the products into the PRC by air. Mere allegations of facts, absent any record evidence for support of such claims, cannot be a basis for undermining the use of publicly available, contemporaneous valuation data from HTS categories in this case.

Because no additional reliable domestic price information has been added to the record, we do not find a basis to revise our use of these statistics for these final results. Given the circumstances in the current review, we find it appropriate to follow the precedent established by Synthetic Indigo. Accordingly, we have made no changes to the selected surrogate values for plastic jars and lids and have used the Indian import statistics as the basis of these valuations.

### **Financial Ratios**

**Comment 10:** In the Preliminary Results, the Department calculated the factory overhead, SG&A, and profit ratios using the 2002-2003 and 2003-2004 financial statements of Preethi Teas Industry Private Ltd. (“Preethi”) and Limtex India Ltd. (“Limtex”).

Since the Preliminary Results, the GDLSK respondents have placed on the record the 2004-2005 financial statement of Limtex which covers seven months of the POR. The GDLSK respondents argue that because the Department found Limtex to be the most representative of the financial experiences of the respondent companies in the Preliminary Results and the Department has a preference for using more data in calculating financial ratios,<sup>171</sup> the Department should include the additional Limtex financial statement submitted by the GDLSK respondents in its calculation of factory overhead, SG&A, and profit ratios for the final results.

On March 1, 2006, the Department released a proposal to recalculate the surrogate financial ratios by removing expenses for provident fund, gratuity, staff welfare, and supervisory charges from the calculation of labor costs and including them in the calculation for factory overhead. See Letter from Wendy Frankel to Interested Parties regarding the surrogate financial ratios (“Financial Ratios Recalculation Letter”). On March 10, 2006, the GDLSK respondents submitted comments on this proposed recalculation.

The GDLSK respondents state the Department uses the ILO labor rate statistics to calculate its expected NME hourly wage rate. The GDLSK respondents argue that the ILO’s term earnings include “bonuses and gratuities and housing and family allowances paid by the employer directly to this employee.” See <<http://laborsta.ilo.org/applv8/data/c5e.html>>. The GDLSK respondents argue that bonuses and gratuities as a portion of earnings “cover seasonal and end-of-year

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<sup>171</sup> See 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”), and the accompanying Issues and Decision Memorandum at Comment 3; see also Shandong Huarong.

bonuses, additional payments in respect of vacation period (supplementary to normal pay), and profit-sharing bonuses.” See *id.*

According to the GDLSK respondents, the ILO states that “the statistics of wages presented in tables 5A and 5B are in general, average earnings per worker.” See *id.* The GDLSK respondents note that the Department uses 5B (“Wages in Manufacturing”) to calculate its expected NME wages. Because 5B represents average earnings per worker, then the GDLSK respondents argue that 5B, the wage data used by the Department, must include gratuities and staff welfare benefits for both family and housing allowances and that these costs are properly included in the materials, labor, and energy (“MLE”) denominator used to calculate the surrogate financial ratios. The GDLSK respondents argue that to remove these expenses from the MLE denominator results in double counting because they are already included in the surrogate labor rate applied by the Department to the respondents’ reported labor usage in its margin calculations. Therefore, the GDLSK respondents argue that gratuities and benefits should not be removed from the MLE denominator, contrary to the Department’s proposal.

As a separate issue, the GDLSK respondents argue that the Department has provided no justification nor a cite to a single authority for its decision to include gratuities and benefits as “factory overhead” items. The GDLSK respondents argue that even if the Department decides to remove gratuities and benefits from the MLE denominator, the Department must provide a separate reasoning as to why it is proper to include these expenses in factory overhead. The GDLSK respondents also argue that this proposal to include gratuities and benefits in factory overhead is contrary to years of precedent holding that these items are elements of direct labor costs. To support their assertion, the GDLSK respondents cite *Pure Magnesium from the People’s Republic of China: Final Results of Antidumping Duty New Shipper Administrative Review*, 63 FR 3085, 3091 (January 21, 1998).

Citing *Folding Metal Tables and Chairs from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 71 FR 2905 (January 18, 2006) (“Tables and Chairs”) and the accompanying Issues and Decision Memorandum at Comment 1, the GDLSK respondents argue that the Department has previously found it necessary to add to its overhead calculation an amount for labor where it has determined that the surrogate factory overhead did not include a labor component and indirect labor would otherwise not be captured in the calculation of normal value. The GDLSK respondents argue that including an amount for labor in factory overhead would not be appropriate here because the surrogate overhead costs already contain labor included in the “repair & maintenance” expenses for machinery and buildings and “other” categories. Also, the GDLSK respondents argue that including an amount for labor in factory overhead would be double counting because the GDLSK respondents reported their consumption of indirect labor which is already included elsewhere in the Department’s calculation of normal value. See Section D Questionnaire Responses and FOP tables of the GDLSK respondents.

The GDLSK respondents argue that the Department should also revise its surrogate financial ratio calculation for other errors. The GDLSK respondents argue that the Department’s preliminary SG&A calculation for Lintex erroneously includes “Clearing and Forwarding

Expenses” and “Import Charges,” and the manufacturing overhead calculation includes “Transport and Handling Charges.” The GDLSK respondents argue that they have reported all transportation-related expenses for both inbound transportation of material inputs and outbound transportation of finished products. The GDLSK respondents, therefore, argue that the inclusion of the transportation-related expenses listed above in SG&A and overhead is improper. The GDLSK respondents argue that these expenses should be removed from the SG&A and the manufacturing overhead calculations for the final results because such expenses are already captured in the Department’s calculation of normal value.

No other party commented on this issue.

**Department’s Position:** We have determined that we should include the 2004-2005 financial statement from Lintex in the calculation of the factory overhead, SG&A, and profit ratios because as noted in the Preliminary Results, the Department finds this company to be representative of the financial experiences of the respondent companies, and it is contemporaneous with the POR. We agree with the GDLSK respondents that we have a preference for using more data in calculating financial ratios because it reduces potential distortion resulting from use of a single financial statement. See Furniture at Comment 3.

After the preliminary results were issued, the Department reexamined its calculation of the surrogate financial ratios and released to all interested parties a proposed recalculation of the financial ratios on March 1, 2006. See Financial Ratio Recalculation Letter. On March 10, 2006, as summarized above, the GDLSK respondents’ submitted comments on this proposed recalculation. We disagree with the GDLSK respondents argument that the Department’s wage rate calculation includes benefits. The Department uses Chapter 5 of the ILO’s Yearbook of Labour Statistics to calculate its wage rate and Chapter 5, "Wages," are defined as follows:

The concept of earnings, as applied in wages statistics, relates to remuneration in cash and in kind paid to employees, as a rule at regular intervals, for time worked or work done together with remuneration for time not worked, such as for annual vacation, other paid leave or holidays. Earnings exclude employers' contributions in respect of their employees paid to social security and pension schemes and also the benefits received by employees under these schemes. Earnings also exclude severance and termination pay.<sup>172</sup>

On the same web page, Chapter 6, "Labour Costs," are defined as including employee benefits:

For the purposes of labour cost statistics, labour cost is the cost incurred by the employer in the employment of labour. The statistical concept of labour cost comprises remuneration for work performed, payments in respect of time paid for but not worked, bonuses and gratuities, the cost of food, drink and other payments in kind, cost of workers' housing borne by employers, employers' social security

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<sup>172</sup> <<http://laborsta.ilo.org/>>

expenditures, cost to the employer for vocational training, welfare services and miscellaneous items, such as transport of workers, work clothes and recruitment, together with taxes regarded as labour cost.

See id.

It is clear that the wages category (Chapter 5) is exclusive of employee benefits such as pension and social security, while the labor cost category (Chapter 6) is inclusive of these employee expenses. As we stated in *Expected Non-Market Economy Wages: Request for Comment on Calculation Methodology*, 70 FR 37761, 37762 (June 30, 2005), the Department based its calculation of the regression-based expected PRC wage rate on data from Chapter 5B of the YLS. In the instant review, the detailed and well-defined surrogate financial data permitted the Department to easily segregate labor expenses into “Wages” (which corresponds to Chapter 5B of the ILO database and, therefore, to the Department's expected NME wage rate), and the other aforementioned labor costs (which are not included in the Department's calculated NME wage rate). Accordingly, to be consistent with the methodology employed in calculating the expected PRC wage rate, we have determined that it is appropriate in the instant review to include these employee benefit categories in factory overhead in order to ensure that they are captured in our calculation of normal value.

We have, therefore, for these final results, removed the expenses included in provident fund and staff welfare from the calculation of labor costs and included them in the calculation for factory overhead because these are overhead expenses which have not been included in our wage rate calculation. We have determined, however, that it is appropriate to leave supervisory charges in the calculation of labor costs because these expenses are presumably captured by the respondent companies in these reviews when they report the skilled direct and skilled indirect labor hours in their FOPs. We have also reviewed the errors alleged by the GDLSK respondents with regard to the inclusion of “Clearing and Forwarding Expenses” and “Import Charges” in the SG&A calculation and “Transport and Handling Charges” in the manufacturing overhead calculation. We have determined after further review that these expenses are indeed captured in the respondents reported individual FOPs and thus, by including these items in our SG&A and manufacturing overhead calculations, we have double-counted these items. Therefore, for the final results, we have removed these items from our surrogate financial ratios for overhead and SG&A. For a more detailed discussion of this issue, see Final FOP Memorandum.

Concerning the inclusion of gratuities in the overhead ratio calculation, we have determined that including this line item in our calculation may be double counting. We typically include “wages” in our wage rate analysis. In our use of wages from Chapter 5 of the ILO's statistics, however, there may be certain instances when wages are not reported and we have, therefore, resorted to the use of earnings in our wage rate calculation. In these cases, including gratuity in the overhead ratio calculation would be double counting because earnings may include gratuities. In this case, we found that only two of the five financial statements used for the final results have a line item for gratuity. Removing gratuities from overhead and placing it into labor for these two statements, however, results in a one hundredth of a percent change in the overhead ratios. When averaging these ratios, with the other overhead ratios from the three financial statements that do

not have a line item for gratuities, there is no change in the overall calculation of the overhead ratio. For a review of these calculations, see the Final FOP Memorandum. Because the effect, in this case, of including or excluding gratuities from the overhead ratio calculation would be insignificant pursuant to section 777A(a)(2) of the Act, we are not making this change for the final results.

### **Sunny's Observed Labor Hours at on-site Verification**

**Comment 11:** Sunny argues that the Department's findings in its harvest verification report that there are discrepancies between Sunny's reported labor hours and the observed labor hours involved in garlic harvesting activities are not reliable and are unsupported by record evidence. Sunny states that the Department's verification report contains a comparison of Sunny's reported harvesting labor hours and the Department's observed labor hours measured at Sunny's farm during on-site verification. Sunny contends that the Department's observed labor hours are not reliable because: 1) The sample plot the Department used to time the harvesting activities is too small to be representative of Sunny's 18,000 Mus of land on which it grew its garlic; 2) The number of garlic plants varies from plot to plot, and a plot with more garlic plants would require more labor hours to harvest; 3) Because the Department did not weigh the amount of garlic bulbs harvested on the sample plot, the labor hours measured are not reliable as a reflection of all of its production; and 4) The Department's timed harvesting activities did not accurately reflect the normal harvesting process. Sunny states that in its Section D submission, it reported digging garlic as the first harvesting step, while the second step consists of trimming the roots and stems, bagging the garlic and transportation from the fields to dry storage. Sunny states that its workers trim the roots and stems, and pack the garlic into bags at the same time, so workers only walk through the fields once as part of the normal harvesting process, whereas the Department timed these three activities separately, so workers had to walk through the fields three times. Sunny argues that performing these three activities simultaneously as one step rather than having workers walk through the fields three times is far more efficient. Sunny argues that in timing the activities separately, the Department considerably inflated the time these three activities actually took.

**Department's Position:** We disagree with Sunny's assertion that the Department's observed labor hours measured during on-site verification are not reliable. First, Sunny argues that the sample plot on which the Department measured the observed labor hours is too small to be representative of Sunny's 18,000 Mus of land. We believe that in terms of the sample size, for a homogeneous population (*i.e.* a population containing one type of component that is uniformly distributed), even a small sample is representative. In this instance, the contributing variables to the population of garlic plants grown at Sunny's farm include the soil, the sunshine, the rainfall, the garlic seeds put into the ground, the fertilizer and herbicides used and the cultivation, (*e.g.*, spacing between garlic plants, timing and frequency of irrigation during the growing season, and the depth of the plowed fields). There is no record evidence to show, for example, that Sunny planted different seeds, applied different fertilizers, or irrigated differently from one plot to another of Sunny's 18,000 Mu of garlic fields. Also, there is no record evidence showing that weather conditions varied significantly across Sunny's farm land. Therefore, we can reasonably conclude that the growing conditions and the cultivation methods employed by Sunny on its farm land are generally consistent, and the garlic plants grown at Sunny's farm constitute a fairly

homogeneous population, and the verification results would be representative of Sunny's activities.

Sunny also argues that the number of garlic plants varies from plot to plot, and a plot with more garlic plants would require more labor hours to harvest. In its Section D response submitted on March 3, 2005, Sunny reported the same spacing between plants and furrows of plants across all its farm land. See Sunny's Section D Response at page 25, question 9D. There is no record evidence showing that garlic was more densely grown on some plots of Sunny's farm land than other plots of the same size. Moreover, while Sunny makes the argument that its plots may not have been planted uniformly, it does not argue that the specific plot on which the Department took the field test at verification in fact contained more plants than its other plots. Thus, while the Department agrees that it should take longer to harvest a plot containing more plants than a plot containing fewer plants (given all other factors were equal), there is no record evidence to support a contention that the plot measured actually contained more plants than its other plots. Thus, this is merely a hypothetical argument put forth by Sunny with no applicable value to the facts in this case.

With respect to Sunny's third argument that because the Department did not weigh the amount of garlic bulbs harvested on the sample plot, the labor hours the Department measured are not reliable, this argument also is not relevant to the facts at issue here. In order to determine the average amount of labor hours required to harvest one Mu of garlic, the Department divided Sunny's reported total harvesting labor hours by the total Mu of Sunny's farm land. In this way, the Department generated a measurement of average labor hours per Mu. This was the measurement the Department was attempting to corroborate with on-site observation of labor hours involved in each harvesting step. Therefore, given our findings with respect to Sunny's first argument above, the amount of garlic bulbs pulled out from the sample field is irrelevant to the Department's measurement unit: average labor hours per Mu.

With respect to Sunny's fourth argument that the Department's timed harvesting activities did not accurately reflect its normal harvesting process, the Department disagrees with Sunny for three reasons. First, a "normal" harvesting process for Sunny includes different approaches, as Sunny officials explained during the on-site verification. Sunny officials explained that the harvesting process includes three basic steps: digging, trimming roots and stems, and bagging. The company officials also explained that some farmers trim roots and stems simultaneously right after digging, and other farmers trim roots and stems several days after digging when garlic plants became drier. Company officials explained that the "timing-decision" to trim roots and stems is left to the farmer's preference. See Sunny's Verification Report at 5. Thus, based on the company officials' explanation, a "normal" harvesting process is not a standardized process. Second, the Department made a conservative comparison to Sunny's reported labor hours because the Department's observed labor hours per Mu did not include transportation labor whereas Sunny's reported labor hours per Mu included transportation labor. The Department was unable to measure the labor hours involved in transportation of fresh garlic from the fields to the side of the roads, and from the side of the roads to Sunny's dry storage area because Sunny's farmers were not conducting these activities at the time of the Department's visit. This is yet another indication contradicting Sunny's new claim that its workers transport the garlic to storage

as part of a continuous harvest process. Third, the main variables contributing to the efficacy of the measured labor hours are the laborers themselves and the tools they used. In a true random sample, farmers should be randomly selected to represent the whole population of Sunny's labor force in terms of gender, ages, experience and physical ability. However, the Department allowed Sunny to select its own farmers and the tools to be used during the observed harvest activity. Sunny was able to control the main variables (i.e., manpower and tools) to maximize the efficacy of the harvesting on the sample plot observed by Department officials. As matter of fact, the Department officials observed that the farmers who were not being timed were working at a noticeably slower speed than those who were being timed. See Sunny's Verification Report at 9.

Furthermore, the Department informed Sunny's counsel prior to on-site verification of its intent to observe harvesting activities out in the field as applicable. After being informed of the Department's intent, Sunny did not express any concern to the Department that it believed the Department's planned procedure was inadequate or would result in unreliable findings. If Sunny believed that to be the case, it should have officially informed the Department and suggested an alternate verification methodology. During on-site verification, we also informed Sunny before each step of the field tests about our plan. Company officials selected and organized farmers for the field tests without ever providing any indication to the Department that the planned timing tests would not yield an accurate reflection of the company's activities. See Sunny's Verification Report at 8. Therefore, we are not persuaded by Sunny's unsubstantiated argument that the verification results are not reliable.

### **FHTK's Observed Labor Hours at on-site Verification**

**Comment 12:** FHTK states that in the Intermediate Product Memorandum, the Department focuses solely on reported labor quantities, particularly, harvest labor quantities, to support its conclusion that all upstream FOPs of all respondents are incomplete, inaccurate, and unusable for calculating normal value. FHTK states that the Department's conclusion is based in part on the Department's harvest verification findings. FHTK argues that the Department's findings in its verification report that FHTK under-reported its labor hours are unsupported by the record evidence because the reasoning on which the conclusion is based stems from a comparison of the Department's observed digging labor hours measured during the on-site verification and FHTK's reported allocated digging labor hours. FHTK states that its reported digging labor hours were allocated based on actual total harvest data collected on a per-worker, per-day basis. FHTK states that the manner in which FHTK records its labor consumption is also complete and accurate from an accounting standpoint. FHTK argues that because harvesting garlic is a fluid process in which individual harvesting steps overlap, it is not practicable or necessary to record the labor hours each worker spends on each individual harvesting step. If the Department were to have verified all steps in the harvest, including trimming and sacking activities at FHTK's farm, FHTK claims it would have found that FHTK's reported total labor amounts for harvesting match the Department's observed labor amounts. FHTK states that the Department made a decision not to verify FHTK's trimming and sacking activities. FHTK argues that, therefore, the Department cannot penalize FHTK by imputing its observations of other respondents to conclude that FHTK also under-reported all of its labor hours.

**Department's Position:** We disagree with FHTK's assertion that the Department's conclusion that FHTK under-reported harvesting labor is based solely on a comparison of FHTK's reported allocated digging labor hours and observed digging labor hours measured at FHTK's farm during on-site verification for several reasons. First, if FHTK believed that the allocated hours could not approximate actual hours for each harvesting step, it should have so informed the Department in its questionnaire response. Thus, regardless of whether FHTK's allocation methodology was appropriate, there is a greater problem underlying the company's reported labor hours as discussed below. We agree with FHTK that harvesting garlic is a fluid process and the time spent on individual steps may vary based on the doubling of certain activities. However, we do not agree that this necessarily leads to a conclusion that timing certain activities could not provide a reasonably accurate reflection of its actual harvesting time. In order to observe harvesting activities, we consulted with respondents and expressed our intention to observe as many of the different production steps as possible. See Memorandum to the File from Brian Ledgerwood, entitled "Choice of Harvest Verification Dates." Given the field conditions, we were only able to observe the digging. If FHTK believed that observing only digging would not yield adequate information to verify its reported labor hours, it should have officially expressed its concern and suggested an alternative verification methodology. Second, we do not agree with FHTK's statement that "the manner in which FHTK records its labor consumption is also complete and accurate from an accounting standpoint." FHTK's allocated labor hours represented in its questionnaire responses were calculated using attendance records that do not reflect actual hours worked each day by its laborers. During verification, we learned that FHTK's attendance records record the farmers' names and the dates they worked, but not the actual hours they worked. See FHTK Verification Report at 7. Therefore, any allocation of labor hours among different harvesting steps based on inaccurate total hours would be inaccurate. While there may be no need to track labor hours by a breakdown of each harvesting activity, in order to report accurate labor hours (allocated or otherwise), FHTK must record the full hours worked by each laborer in harvesting activities as a whole. In other words, if certain laborers work 10 or 12 hours per day, allocating labor using a standard eight hour day is distortive. For FHTK, we based our finding that the reported labor factors were unreliable on the discovery that FHTK does not capture full labor hours because it did not maintain books and records detailing the actual number of hours put in by each farmer each day, either by harvesting task or harvesting as a whole. See Intermediate Product Memorandum, Appendix A.

### **Trans-High's Observed Labor Hours at on-site Verification**

**Comment 13:** Trans-High argues that the Department's finding that Trans-High's producer Yun Feng under-reported its harvesting labor hours was based on a copying error by the Department in its verification report. Trans-High states that the Department mistakenly recorded a much greater amount of total garlic production than Trans-High actually produced during the POR and reported to the Department. Trans-High believes that this error led the Department to the conclusion that its reported labor hours were insufficient (i.e., under-reported) to produce that amount of garlic.

**Department's Position:** We do not agree with Trans-High that the Department's verification report contains an error regarding labor hours. Trans-High based its argument on a reading of the draft verification report sent out to Trans-High for comments on the bracketing of proprietary

information. Prior to issuing the Department's official report of the Trans-High verification, we released a draft version of the verification report to Trans-High's counsel for bracketing comments consistent with standard Department practice regarding release of verification reports. In response, counsel for Trans-High identified the error in the total production figure addressed in the comment above. We reviewed our calculation and confirmed that there was a transcription error which we fixed prior to the official release of the verification report to Trans-High and to all interested parties in this proceeding having an administrative protective order. Further, we placed the official copy which contained the correct production number on the record of this review. However, pursuant to its relevant comments in its case brief, the Department discovered that Trans-High's counsel did not pick up the official version of the report from the Department's CRU and had based its comments on the draft released for bracketing comments. We re-released the official version of Trans-High's verification report to Trans-High and allowed it one week to submit any comments relevant to the corrected version that was officially released to the parties to this proceeding. See Letter from Blanche Ziv to Francis Sailer, dated February 14, 2006. Trans-High did not submit any comments in response to this opportunity. See Memorandum from Jennifer Moats to the File entitled, "No Comments on Official Version of Trans-High Verification Report," dated March 9, 2006. Therefore, because Trans-High's comment is based on erroneous data, and it did not submit any comment in response to the accurate data, its comment on this issue is no longer applicable.

#### **Yield-Loss Ratio for Shanyang**

**Comment 14:** Shanyang argues that the Department incorrectly applied a yield loss ratio to processing labor and packing materials despite the fact that the consumption of these inputs was calculated and reported to the Department on a "net" weight of finished, packed product. The respondent argues that the consumption of processing labor and packing materials had already been reported on a basis that took into consideration any possible loss and thus, improperly inflated the normal value. Shanyang argues that the Department should recalculate normal value without applying the yield loss ratio to processing labor and packing materials. In the Preliminary Results the Department applied yield loss to the calculations of direct materials, processing labor, and packing materials.

The petitioners did not comment on this issue.

**Department's Position:** We agree with Shanyang that yield loss should not be applied to its processing labor and packing materials in our calculation of its normal value because these factor values were calculated and reported on a "net" weight basis (i.e., already taking into account any yield loss). Accordingly, we will correct this error for the final results.

#### **Yield-Loss Ratio to Processing Inputs for FHTK**

**Comment 15:** FHTK contends that the Department's application of a yield loss to its reported water and electricity consumption for peeled garlic processing in the Preliminary Results is in error because it already incorporated any yield loss incurred for processing peeled garlic in its

reported FOPs.<sup>173</sup> FHTK requests that the Department not adjust water and electricity consumption for yield loss in the final results.

**Department's Position:** We agree with FHTK that the Department erred in its application of yield loss to FHTK's peeled garlic processing in the Preliminary Results. Accordingly, we did not make any adjustments for yield loss to FHTK's reported water and electricity FOPs for the final results. For further information, see the April 26, 2006, "Analysis for the Final Results of the Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Taian Fook Huat Tong Kee Foodstuffs Co., Ltd." ("FHTK Final Analysis Memorandum").

#### **Water<sup>174</sup> and Electricity – FHTK**

**Comment 16:** FHTK states that, in the Preliminary Results, the Department incorrectly assigned water and electricity consumption at the processing stage to both fresh garlic and peeled garlic.<sup>175</sup> FHTK contends that water and electricity consumption should not be applied to fresh garlic, only to peeled garlic for the final results. FHTK states that water and electricity consumption at the processing stage applies to peeled garlic only.

**Department's Position:** We agree with FHTK that the Department erred in its application of FHTK's reported water and electricity FOPs to fresh garlic in the Preliminary Results. Accordingly, we only applied these FOPs to peeled garlic for the final results. For further information, see the April 26, 2006, FHTK Final Analysis Memorandum.

#### **Clerical Error – Valuation of Cartons for Shanyang**

**Comment 17:** Shanyang argues that the Department miscalculated its cost for cartons in the Preliminary Results because it treated its reported consumption as a weight-based factor rather than a piece-based factor. See Clarification of Jinxiang Shanyang's FOP Chart, dated July 13, 2005, at page 2 and Attachment 1 ("Clarification of FOP Chart"). Shanyang claims that its Clarification of FOP Chart is its most recent FOP database submitted and that the Department should use the unit of measure contained in this database. In this Clarification of FOP Chart, Shanyang reports that certain packing materials were inadvertently reported in kilograms and that the reported amount represents a portion of a single carton (i.e., piece) utilized by each kilogram of packed garlic and not a kilogram value. Shanyang contends that the reported piece amounts need to be converted to a weight basis by multiplying the per-piece amount by the reported kilogram weight of the carton used for each CONNUM. According to Shanyang, the carton

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<sup>173</sup> See FHTK submission of comments on minor errors, dated December 19, 2005, at page 2.

<sup>174</sup> The Department determined in the 2002-2003 administrative review that agrarian water rates for irrigation are highly subsidized by the Indian government and, therefore, it is appropriate to use an Indian industrial rate as a surrogate value for water in the PRC.

<sup>175</sup> See FHTK submission of comments on minor errors, dated December 19, 2005, at page 2.

weights were reported in Shanyang's Second Supplemental Questionnaire Response Section D, dated June 7, 2005, at Exhibit 19 (“Second Supplemental”).

**Department’s Position:** The Department agrees with Shanyang that it calculated the cost for cartons in the Preliminary Results on a weight basis instead of a piece basis and corrected this in the final results.

**Clerical Error – Shanyang's Plastic Jars and Lids**

**Comment 18:** Shanyang argues that the Department made several mistakes in calculating the cost of jars in the Preliminary Results. First, Shanyang contends that the Department erred on its valuation of its reported consumption of jars and lids. Shanyang contends that the Department should have calculated Shanyang's jar value using either its reported inputs for produced jars or the reported amount for purchased jars, but not both as the Department did in the Preliminary Results. Shanyang alleges that it is the Department's longstanding practice to value the cost of an input (i.e., jars and lids) by applying the factors used to produce that specific input. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Ball Bearings and Parts Thereof From the People's Republic of China, 68 FR 10685 (March 6, 2003), and accompanying Issues and Decision Memorandum, at Comment 6 (“Ball Bearings from the PRC”). Shanyang argues that alternatively, the Department should apply surrogate values to Shanyang's reported consumption for purchased jars and lids.

Shanyang further argues that the Department incorrectly calculated the cost of jars and lids in its normal value calculation in the Preliminary Results. Shanyang argues that it reported jar and lid consumption on a piece basis not a weight basis and that the Department should have converted the piece-based amount to a weight basis by multiplying the reported per-piece amount by the reported kilogram weight of one piece (i.e., jar or lid) used in the production of peeled garlic.

Finally, Shanyang argues that the Department should not have added the lid and jar weights together because these inputs are made out of different raw materials. Shanyang contends that the Department should calculate separate surrogate values for jars and lids, respectively, based on reported consumption factors of each in its “Second Supplemental Questionnaire Response, Section D,” dated June, 7, 2005, at Exhibit 19 (“Second Supplemental”).

**Department's Position:** The Department agrees with Shanyang's argument that the Department double counted its inputs for jars and lids in the Preliminary Results. We note that the respondent did submit information prior to the Preliminary Results regarding the percentage of jars and lids that it purchased and the percentage of jars and lids that it produced during the POR. In its Second Supplemental, at Exhibit 18, Shanyang reported monthly consumption rates for jars and lids, which breaks out the months where purchased jars and lids and where produced jars and lids were being used, respectively. Shanyang reported that it began producing jars and lids in June 2004, and that prior to June, it purchased jars and lids from an NME supplier. Thus, the Department used a similar methodology as it did in the most recent case of Mushrooms from the

PRC,<sup>176</sup> by calculating a cost for the portion of jars and lids of which it purchased using the reported amount by its purchased plastic jars and lids. For the portion of produced jars, the Department used the reported amount of materials used to produce the jars and lids (*i.e.*, polyethylene plastic, polyester plastic, unskilled jar labor, skilled jar labor, jar electricity, and plastic jar inserts). We then calculated a normal value using the values of the respective percentages of total consumed jars and lids.

The Department disagrees with Shanyang's argument regarding the basis by which the Department calculated a value for jars and lids. In the margin calculation log, we converted the reported value from a piece basis to a weight basis by multiplying the reported jar value (*i.e.*, reported in pieces) by the combined weight of one jar and lid. Thus, the Department correctly converted jars and lids from a piece basis to a weight basis, but we erred in multiplying a combined jar/lid weight instead of separate weights for jars and lids. Thus, for these final results, the Department used the same calculation formula to convert the inputs that were reported on a piece basis to a weight basis value as it did in the Preliminary Results except for the changes noted below.

The Department agrees with Shanyang that we incorrectly calculated a value for jars and lids in that we should have separate value calculations for jars and lids because these inputs consist of different materials. In the Preliminary Results, we erred in multiplying a combined jar/lid weight. Thus for these final results, the Department calculated a separate value for jars and lids on a piece basis by first converting each of the reported jar and lid amounts from a piece basis to a weight basis, (*i.e.*, by multiplying the piece by the reported weight respectively, of the piece) and then applying the weight-based surrogate value to the converted FOP respectively.

#### **Exchange Rate Application – FHTK**

**Comment 19:** FHTK asserts that the Department should use the POR-average exchange rate in converting surrogate values from Indian rupees to U.S. dollars. FHTK claims that the Department erred in using daily exchange rates when converting surrogate values in the Preliminary Results.

**Department's Position:** The Department notes that its decision to use a daily exchange rate rather than an average exchange rate was a methodological choice rather than a clerical error<sup>177</sup>, as alleged by FHTK. Nevertheless, the Department will address FHTK's comment regarding the Department's exchange rate application in this case. Both section 773A of the Act and 19 CFR 351.415 provide that the Department is to convert foreign currencies into U.S. dollars using the exchange rate in effect on the date of sale of the subject merchandise, the only exception being when the Secretary establishes that a currency transaction on forward markets is directly linked to

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<sup>176</sup> See Final Results and Final Rescission, in Part, of the Antidumping Duty Administrative Review of Certain Preserved Mushrooms from the People's Republic of China, 70 FR 54361 (September 14, 2005), and accompanying Issues and Decision Memorandum at Comment 4 ("Mushrooms from the PRC").

<sup>177</sup> See Certain Fresh Cut Flowers from Columbia: Final Results of Antidumping Duty Administrative Review, 61 FR 42833-02 (August 19, 1996).

an export sale under consideration. Moreover, the U.S. Court of Appeals for the Federal Circuit (“CAFC”) addressed the Department’s currency conversion practice in Viraj Group, Ltd. v. United States<sup>178</sup> where it held, “{t}hat Congress intended Commerce to utilize the sale date for currency conversions is unquestionable in the face of an unambiguous and specific statute providing exactly that.” Accordingly, the Department has standardized its foreign currency conversion practice,<sup>179</sup> whereby all foreign currency conversions reflect the exchange rate in effect on the date of sale of the subject merchandise. This practice is clearly reflected in recent NME decisions.<sup>180</sup> Therefore, the Department will continue in these final results to use daily exchange rates corresponding to the date of the U.S. sale when converting surrogate values from Indian rupees to U.S. dollars.

### **Clerical Error – Linshu Dading Select Gross Unit Prices**

**Comment 20:** Linshu Dading alleges that it made a clerical error while calculating the gross unit prices of two observations reported in its U.S. Sales Database and requests that the Department use revised values in its final calculations. These revised values are supported by a sales invoice that Linshu Dading included as an attachment to its January 23, 2006, case brief. The petitioners did not comment on this issue.

**Department’s Position:** We agree that Linshu Dading made a clerical error in its original U.S. Sales Database and will use the information submitted in its case brief as the most accurate information on the record for our final margin calculations.

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<sup>178</sup> Viraj Group v. United States, 343 F.3d 1371 (Fed. Cir. 2003).

<sup>179</sup> While the Department recognizes that it has, in the past, employed a POR average exchange rate rather than a daily exchange rate when converting foreign currencies, the Department has since standardized its currency conversion practice by employing a daily exchange rate currency conversion.

<sup>180</sup> See e.g., Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Preliminary Results of Administrative Reviews and Preliminary Partial Rescission of Antidumping Duty Administrative Reviews, 71 FR 11580 (March 8, 2006); Certain Preserved Mushrooms from the People's Republic of China: Partial Rescission and Preliminary Results of the Sixth Administrative Review, 71 FR 11183 (March 6, 2006); Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Preliminary Partial Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China, 70 FR 77121 (December 29, 2005); Fresh Garlic from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Preliminary Results of New Shipper Reviews, 70 FR 69942 (November 18, 2005); Preliminary Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China, 70 FR 67412 (November 7, 2005); Freshwater Crawfish Tail Meat From the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review, 70 FR 58672 (October 7, 2005); Brake Rotors From the People's Republic of China: Preliminary Results of the Twelfth New Shipper Review, 70 FR 56634 (September 28, 2005); Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review, 70 FR 54007 (September 13, 2005); Saccharin From the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 70 FR 45657 (August 8, 2005); Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part, 70 FR 39744 (July 11, 2005).

### **Clerical Error – Bulb Freight for Sunny and Qingyuan**

**Comment 21:** When examining the Preliminary Results calculations for Sunny and Qingyuan, we discovered a ministerial error in that we inadvertently included a cost for freight from the respondents' respective garlic seed suppliers to their respective processing facilities. Specifically, in both of the company-specific spreadsheets for Sunny and Qingyuan, at the worksheet tab labeled "Sigma Freight," we calculated a freight cost based on the shorter of the two reported distances from either (1) the nearest PRC seaport to the location producing the subject merchandise, or from (2) the PRC domestic supplier of garlic seeds to the location producing the subject merchandise. We then linked this cost to the worksheet tab labeled "Factors." Then, within this worksheet, we added the freight cost to the surrogate value for garlic bulbs. However, in the Preliminary Results, we stated, "...if a respondent reported that it purchased its garlic from an unaffiliated supplier prior to processing, we included a freight cost from the garlic bulb supplier to the company's processing facility. We did not include a freight cost for the garlic bulb if the respondent grew and processed its own garlic."<sup>181</sup> Accordingly, we placed memoranda to the file in which we stated that for purposes of the final results of review we intended to revise our calculations with respect to these two respondents to exclude such freight costs. See company-specific memoranda to the file entitled, "Clerical Error in Preliminary Results Margin Calculation," dated November 18, 2005 (for Sunny) and November 22, 2005 (for Qingyuan). No interested party commented on this issue.

**Department's Position:** In order to correct this error, the Department deleted the bulb freight calculation as well as the link described above from the worksheet tabs labeled "Sigma Freight" and "Factors," respectively, for both Sunny and Qingyuan. The revised surrogate value that is now read into the SAS program is exclusive of any freight costs for both companies. See Memorandum to the File entitled, "Analysis for the Final Results of the Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Sunny Import & Export Co. Ltd.," dated November 18, 2005. See also Memorandum to the File entitled, "Analysis for the Final Results of the New Shipper Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Zhangqiu Qingyuan Vegetable Co., Ltd.," dated November 18, 2005.

### **Clerical Error – Calculation of Electricity for Qingyuan**

**Comment 22:** When examining the Preliminary Results calculation program for Qingyuan, we discovered that we incorrectly calculated the value for electricity. We inadvertently calculated electricity by adding Qingyuan's reported consumption of electricity to the surrogate value for electricity. Instead, Qingyuan's reported consumption of electricity should have been multiplied by the surrogate value for electricity.

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<sup>181</sup> See Preliminary Results, 70 FR at 69950.

**Department's Position:** We corrected Qingyuan's calculation of electricity by multiplying (instead of adding) Qingyuan's reported consumption of electricity by the electricity surrogate value for the final results. For further information, see Memorandum to the File entitled, "Analysis for the Final Results of the New Shipper Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Zhangqiu Qingyuan Vegetable Co., Ltd.," dated April 26, 2005.

### **Clerical Error - Normal Value Calculation for Dong Yun**

**Comment 23:** When examining the Preliminary Results calculation program for Dong Yun, we discovered an inadvertent error in our calculation for tape expense. Specifically, we discovered that in the Preliminary Results, we erroneously converted the surrogate value for tape from a rupees per-kilogram amount to a rupees per-roll amount. Because Dong Yun reported its usage of tape in kilograms and not in rolls,<sup>182</sup> this conversion was not necessary.

Further, in our review of the Preliminary Results calculation program for Dong Yun, we also determined that it would be inappropriate to include its reported inputs for the variables PLASNET1 and PLASNET2 in our normal value calculation because PLASNET1 and PLASNET2 are types of plastic bags used for internal purposes such as for packing harvested garlic, and are not used to pack the final product shipped for export to the United States.<sup>183</sup> Since we started our calculation of Dong Yun's normal value using the intermediate product (i.e., the fresh garlic bulb) in lieu of its reported upstream FOPs, these type of costs that occur prior to the merchandise's removal from cold storage are already encapsulated by the surrogate value that we have chosen for the fresh garlic bulb. For further discussion on this issue, see Comment 4.

**Department's Position:** We corrected Dong Yun's tape expense calculation in our normal value calculation for the final results. We corrected Dong Yun's packing expense calculation by removing PLASNET1 and PLASNET2 from Dong Yun's normal value calculation. For further information, see Memorandum to the File entitled, "Analysis for the Final Results of the Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Jinxiang Dong Yun Freezing Storage Co., Ltd.," dated April 26, 2006.

### **Clerical Error – FOPs for Direct and Indirect Labor – FHTK**

**Comment 24:** When examining the Preliminary Results calculation program for FHTK, we discovered that we inadvertently transposed FHTK's reported FOPs for direct and indirect labor in its margin calculations.

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<sup>182</sup> See Dong Yun's May 26, 2006, supplemental response at exhibit SD19 and its August 2, 2006, supplemental response at exhibit 1.

<sup>183</sup> See Dong Yun's March 2, 2006, response at page D9.

**Department's Position:** We corrected this transposition in FHTK's margin calculation for the final results. For further information, see Memorandum to the File entitled, "Analysis for the Final Results of the Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Taian Fook Huat Tong Kee Foodstuffs Co., Ltd.," dated April 26, 2005.

**Recommendation**

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of the reviews and the final dumping margins for all of the reviewed firms in the Federal Register.

Agree \_\_\_\_\_

Disagree \_\_\_\_\_

\_\_\_\_\_  
David M. Spooner  
Assistant Secretary  
for Import Administration

\_\_\_\_\_  
Date

## ATTACHMENT 1

### Yield Loss Analysis

In the Intermediate Product Memo, we analyzed the yield loss calculations reported by each of the respondents in these reviews and concluded that “because the respondents calculated these ratios on partial values, or inconsistent points in the production cycle, these reported yield loss figures are not accurate and the normal values calculated using these yield loss figures are understated.”<sup>184</sup> No party commented or disputed the fact that yield loss does occur at each of the points laid out in these hypothetical calculations in their briefs, and none of the other arguments raised by the parties cause us to question or reconsider the accuracy of these calculations. However, as explained in the comments, Ziyang, FHTK, Dong Yun, Trans-High, and Shanghai LJ argued that we should use their reported upstream FOPs in lieu of the intermediate input methodology. Therefore, in addressing the issue of yield loss with respect to each of these respondents, we refer back to this attachment when discussing their reported yield loss figures.

The purpose of this attachment is to give a more complete explanation of the issue of yield loss and its importance to the normal value calculations as it relates to all garlic respondents. The issue of yield loss as it relates to garlic is important because, as we explained in detail in the Intermediate Product Memo, the weight of the garlic will be at its highest when the garlic is pulled from the ground and will decrease with time thereafter due to the loss of water weight and the discarding of roots, stems, and skins during processing. In addition, because such loss occurs at several stages between harvesting and processing, yield loss must be calculated at each of those stages.<sup>185</sup> Because each respondent in these reviews has derived its FOPs for the pre-processing stages of garlic production using a denominator attributed to the weight of the garlic at some point in time prior to processing, our calculation of normal value will not be accurate unless we can incorporate each respondent’s full yield loss, from each stage where such loss occurs, into the calculations.

It is important to note that the accuracy of the yield loss calculations is unique to each respondent in that the garlic weight a respondent uses as the denominator to derive its pre-processing FOPs serves as the beginning point of its yield loss calculation. Using this FOP denominator as the starting point, a respondent then has to record the weight of the garlic in each subsequent point in time up through processing and packing of the subject merchandise. Integral to the yield loss calculation is the weight of the garlic in each stage, including beginning balance, inventory “in” and “out” amounts, as well as the ending balance. However, unlike other products subject to antidumping investigations and reviews (e.g., steel), the Department is faced with unique issues with a product such as garlic in that the weight of the garlic decreases over time as it sits in storage. The accuracy of the yield loss calculations is further complicated by the fact that the size

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<sup>184</sup> See Intermediate Product Memo, at 7.

<sup>185</sup> Such stages include dry storage, cold storage, fresh garlic processing, and peeled garlic processing. See Intermediate Product Memo at 6.

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of the land on which a respondent grows its garlic generally changes from year to year, thereby affecting the overall production levels (*i.e.*, size of the harvest) each year. Therefore, in situations where a respondent keeps any of the garlic in dry storage or cold storage, we are faced with unique problems in that a) the garlic remaining in inventory from the previous year's harvest has lost considerably more weight than any additional amounts added to inventory from the subsequent harvest, b) yield loss is not accounted for on a harvest-specific basis in such instances, and c) we do not know the ultimate disposition of any garlic remaining in storage (*i.e.*, whether this garlic spoiled and was discarded, or whether it was ultimately processed into fresh garlic, peeled garlic, or non-subject merchandise).

Therefore, in the Intermediate Product Memo, we explained the stages of production at which respondents would need to weigh their garlic output in order to ensure that their records could be used to calculate each company's respective yield loss. We also provided hypothetical yield measurements and yield loss calculations in the Intermediate Product Memo at Appendix N to demonstrate the issue. The best way to further illustrate these stages of production is through a directed narrative, as follows.

### *Sample Yield Loss Calculations Using Hypothetical Data*<sup>186</sup>

We started these sample calculations with a hypothetical weight of the total garlic harvest (point "a"), minus a small amount reserved for seed for use in the next growing season (point "b"), resulting in the starting point for the weight of the garlic that will eventually be processed into subject merchandise (point "c"), as follows:

	<u>Hypothetical Weight</u>
<b>Total Weight of Seed Planted</b> .....	250 kg
<b>Total Harvest</b> .....	3,325 kg (a)
less: Garlic set aside for seed.....	100 kg (b)
equals: Garlic set aside for processing.....	3,225 kg (c)

We then identified various stages subsequent to this point and showed how that weight would decrease due to loss as the garlic sits in inventory first for dry storage, and then cold storage. Our sample calculation assumes that the original denominator used by the respondents in their FOP calculations is 3,225 kg. For dry storage, we listed the weight of the garlic for beginning inventory (point "d"), the additional weight attributed to the harvested garlic entering inventory (point "c" from above), less amounts transferred to cold storage (point "e"), as well as the ending inventory balance (point "f"). We then calculated the yield loss during dry storage by calculating the percentage difference in the weight of the garlic from when it first entered that stage to when it left that stage, as follows:

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<sup>186</sup> For purposes of these sample calculations, we did not rely on any business proprietary information reported in the questionnaire responses on the record of these reviews.



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### **Peeled Processing**

Beginning Inventory.....	0 kg (o)
plus: Transfer from cold storage.....	1,000 kg (i) <i>(from above)</i>
less: Garlic moved to finished stock.....	650 kg (p)
less: <u>Ending Inventory.....</u>	<u>0 kg (q)</u>
<hr/>	
= Peeled Processing Loss.....	(o) + (i) - (p) - (q) = 350 kg (D)

Peeled Processing Loss Percentage =  $C/(i) = 35.00 \%$

### **Processing – Non-Subject Merchandise<sup>187</sup>**

Beginning Inventory.....	0 kg (r)
plus: Transfer from cold storage.....	1,000 kg (j) <i>(from above)</i>
less: Garlic moved to finished stock.....	850 kg (s)
less: <u>Ending Inventory.....</u>	<u>0 kg (t)</u>
<hr/>	
= Processing Loss.....	(r) + (j) - (s) - (t) = 150 kg (E)

Loss Percentage =  $E/(j) = 15 \%$

Using these hypothetical yield loss calculations as a guide, we now illustrate how a respondent should account for yield loss and how that would impact its reported garlic seed FOP. If a respondent’s total consumption of garlic seed during the applicable growing season is, hypothetically, 250 kg (*i.e.*, the numerator of its FOP calculation), and it uses the weight of its total harvest net of the amount reserved for seed (point “c” above) as the denominator of the FOP, then it would report to the Department an FOP for garlic seed using the following formula:

garlic seed consumption.....	250 kg
divided by: total harvested garlic.....	3,225 kg
equals: garlic seed usage rate .....	0.0775 kg seed per 1 kg harvested garlic

In order to derive the actual cost to the respondent, it would apply the sum of the yield loss ratios derived above, as follows:

<u><b>Fresh Garlic</b></u>		<u><b>Peeled Garlic</b></u>	
dry storage loss	5.43%	dry storage loss	5.43 %
cold storage loss	1.64 %	cold storage loss	1.64 %
<u>fresh processing loss</u>	<u>10.00 %</u>	<u>peeled processing loss</u>	<u>35.00 %</u>

However, these percentages can not be added together as they are all calculated using different denominators. Therefore, the actual yield loss amount (per kilogram of garlic) would have to be

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<sup>187</sup> We simplified this section from the sample calculations in the Intermediate Product Memo to exclude the line item identified as “Other.”

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calculated at each stage (i.e., during dry storage, during cold storage and during processing) for each type of finished product. Thus, the actual usage rates, using the hypothetical calculations shown above, would be derived as follows:

### **Reported usage (all products)**

equals.....0.0775 kg seed per 1 kg of garlic harvested (*as shown above*)

### **Actual Usage (Fresh Garlic)**

Garlic Seed FOP.....0.0775 / (1 - 5.43%)

equals.....0.0775 / (1 - 0.0543)

equals.....0.0775 / 0.9457

equals.....0.0820 kg seed per 1 kg of garlic to achieve dried/stored garlic

Garlic Seed FOP.....0.0820 / (1 - 1.64%)

equals.....0.0820 / (1 - 0.0164)

equals.....0.0820 / 0.9836

equals.....0.0833 kg seed per 1 kg of garlic to achieve cold/stored garlic

Garlic Seed FOP.....0.0833 / (1 - 10.00 %)

equals.....0.0833 / (1 - 0.1000)

equals.....0.0833 / 0.9000

equals.....0.0926 kg seed per 1 kg of garlic to achieve fresh processed garlic

### **Actual Usage (Peeled Garlic)**

Garlic Seed FOP.....0.0775 / (1 - 5.43%)

equals.....0.0775 / (1 - 0.0543)

equals.....0.0775 / 0.9457

equals.....0.0820 kg seed per 1 kg of garlic to achieve dried/stored garlic

Garlic Seed FOP.....0.0820 / (1 - 1.64%)

equals.....0.0820 / (1 - 0.0164)

equals.....0.0820 / 0.9836

equals.....0.0833 kg seed per 1 kg of garlic to achieve cold/stored garlic

Garlic Seed FOP.....0.0833 / (1 - 35.00%)

equals.....0.0833 / (1 - 0.3500)

equals.....0.0833 / 0.6500

equals.....0.1282 kg seed per 1 kg of garlic to achieve peeled processed garlic

If a respondent does not record the weight of the garlic at all points necessary to derive accurate yield loss ratios, then a significant element of cost will be missing from the normal value calculations by using the gross harvested garlic weight in the denominator of the garlic seed FOP

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because, as demonstrated above in our sample calculations, the actual garlic seed FOPs for fresh and peeled garlic (i.e., 0.0926 for fresh garlic and 0.1282 for peeled garlic) are significantly higher than its reported FOP of 0.0775 kg of seed per 1 kg of finished garlic.

*(End Sample Yield Loss Calculations)*