

September 20, 2007

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

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

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

SUMMARY

We have analyzed the case and rebuttal briefs of interested parties in the 11th new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China ("PRC"). As a result of our analysis, we have made changes to certain margin calculations from Fresh Garlic from the People's Republic of China: Preliminary Results of New Shipper Reviews, 72 FR 21219 (April 30, 2007) ("Preliminary Results").¹

We recommend that you approve the positions described in the sections below of this Issues and Decision Memorandum. Below is the complete list of the issues in this antidumping duty administrative review for which we received comments and rebuttal comments from interested parties.

¹ Specifically, the changes are a surrogate value change affecting all companies (discussed in Comment 1) and a specific margin calculation change for Weifang Hongqiao International Logistics Co., Ltd. ("Hongqiao") (discussed in Comment 3).

I. GENERAL ISSUES:

Comment 1: Garlic Bulb Surrogate Value

- A. Product Specificity
- B. Broad Market Average
- C. Public Availability
- D. Contemporaneity
- E. Tax and Duty Exclusivity

Comment 2: Surrogate Financial Ratios

Comment 3: Hongqiao's Margin Calculation

BACKGROUND:

The merchandise covered by the order is fresh garlic as described in the "Scope of the Order" section of the Preliminary Results. The period of review ("POR") is November 1, 2005, through April 30, 2006.² In accordance with section 351.309(c)(ii) of the Department of Commerce's ("the Department") regulations, we invited parties to comment on our Preliminary Results. The Department received timely case briefs from Weifang Hongqiao International Logistics Co., Ltd. ("Hongqiao") on May 22, 2007, and from Petitioners³ on June 15, 2007. The Department received timely rebuttal briefs from Shandong Wonderland Organic Food Co., Ltd. ("Wonderland") and Shenzhen Xinboda Industrial Co., Ltd. ("Xinboda") on June 22, 2007. On June 27, 2006, the Department issued a questionnaire to the foreign market researcher ("FMR") responsible for providing the garlic bulb prices as submitted by Petitioners in their April 3, 2007, surrogate value submission.

On June 28, 2007, we extended the time limit for the completion of the final results of these reviews. See *Fresh Garlic from the People's Republic of China: Extension of Time Limits for Final Results of New Shipper Reviews*, 72 FR 37195 (July 9, 2007). On July 11, 2007, we received the response to the Department's June 27, 2006, FMR questionnaire. On August 10, 2007, we reopened the record and provided parties an opportunity to comment on the FMR's July 11, 2007, response. On August 15, 2007, we received a supplemental brief from Petitioners with regard to the FMR's July 11, 2007, response. No other party submitted comments.

² On April 23, 2007, we issued a memorandum extending the end of the POR from April 30, 2006, to May 4, 2006, to capture entries of two of the new shippers' merchandise into the United States market which happened after April 30, 2006. See Memorandum to the File from Javier Barrientos, Senior Analyst, through Alex Villanueva, Program Manager, Office 9: Expansion of the Period of Review in the New Shipper Reviews of Fresh Garlic from the People's Republic of China, dated April 23, 2007 ("POR Expansion Memo").

³ Petitioners are the Fresh Garlic Producers Association ("FGPA") and its individual members. The individual members of the FGPA are Christopher Ranch LLC, The Garlic Company, Valley Garlic, and Vessey and Company, Inc.

I. GENERAL ISSUES

Comment 1: Garlic Bulb Surrogate Value

Petitioners state that based on record evidence, the Department correctly selected the super-A prices from the Azadpur APMC Market Information Bulletin (“Bulletins”) to value garlic bulbs. Petitioners claim that, pursuant to section 773(c)(1) of the Tariff Act of 1930, as amended (“the Act”), the Azadpur APMC Bulletins fulfill the criteria (*i.e.*, public availability of the information; product specificity; representation of a broad-market average; tax and duty exclusivity; and contemporaneity to the POR) in selecting surrogate values.

However, Petitioners contend that the Department should have used only the super-A prices from the Himachal Pradesh region of India where the Agrifound Parvati varieties, which, Petitioners believe, are most similar to Chinese garlic processed by respondents. Petitioners maintain that the price for the Agrifound Parvati super-A variety reflects an accurate market value for the larger China variety bulbs, which represents the best information available for valuation purposes. Furthermore, Petitioners note that the record shows all respondents under review sold garlic within the super-A grade category. Thus, Petitioners urge the Department to value garlic bulbs using the average price for super-A garlic from the Himachal Pradesh region.

In the alternative, Petitioners state that the Department should use more pricing data points from the Bulletins. Petitioners note that the Department used pricing data points from May 1 through July 14, 2006, in the Preliminary Results. However, Petitioners argue that additional pricing data points from July 14, 2006, through January 18, 2007, are on the record of this review and should be used for the final results if the Department does not use the average price for super-A garlic from the Himachal Pradesh region. Petitioners argue that using all the pricing data points encompassing the entire POR results in a more accurate and comprehensive surrogate value.

Wonderland argues that the Department should not use super-A garlic bulb prices to calculate normal value for the final results. Wonderland notes that pursuant to the Act, it is the Department’s practice to select, to the extent practicable, surrogate values which are: 1) publicly available; 2) product-specific; 3) representative of a broad-market average; 4) tax-exclusive; and 5) contemporaneous within the POR. Wonderland contends that the super-A pricing data from the APMC bulletins do not fulfill the surrogate value criteria.

First, according to Wonderland, the Azadpur APMC pricing data is not contemporaneous with the POR, notwithstanding an “expansion” of the POR, which resulted in a POR overlap of only four days. Wonderland urges the Department to use the contemporaneous data available from the Agricultural Marketing Information Network (“Agmarknet”) database, which, it contends, is publicly available and can be obtained without difficulty. Second, Wonderland claims that the Azadpur APMC super-A pricing data does not represent a broad-market average as the data is from one APMC. Moreover, Wonderland asserts that the super-A garlic traded at the Azadpur APMC in New Delhi does not represent the large-sized garlic sold in other markets throughout

India. Third, Wonderland argues that the super-A garlic from the Azadpur APMC is not product-specific to the garlic bulbs Wonderland purchased and processed during the POR. Specifically, Wonderland contends that the super-A garlic price from the Azadpur APMC represents the price of finished garlic rather than raw garlic. Wonderland argues that the raw garlic it purchased during the POR was unprocessed harvested garlic which was yet to be processed at the time of purchase. Wonderland further contends that the super-A garlic prices reflect the price of trimmed, cut, and packed garlic ready for sale. Wonderland claims that finished garlic and raw garlic are two very different products and one should not be used as a pricing surrogate for the other. Wonderland further states that if the Department continues to use super-A pricing from the Azadpur APMC, the Department should deduct processing, packing, and transportation costs from the Azadpur APMC super-A garlic prices to adjust for the differences between finished garlic and raw garlic. Fourth, Wonderland asserts that although Petitioners argued that there was no evidence that the super-A prices included taxes or duties, there was also no evidence on the record that the super-A prices excluded taxes or duties either. Wonderland claims that the Department's deduction of the market fee in the Preliminary Results does not necessarily make the price duty and tax exclusive.⁴

Department's Position:

Consistent with our finding in the previous review, we find the Azadpur Agricultural Produce Marketing Committee's APMC Market Information Bulletin to be the best available information to value Respondents' garlic bulb input (the intermediate product) because it is specific to the product in question, represents a broad market average, is publicly available, and is tax and duty exclusive.

The Department's practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, surrogate values which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POR and exclusive of taxes and duties. See Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the Eleventh Administrative Review and New Shipper Reviews, 72 FR 34438 (June 22, 2007) and accompanying Issues and Decision Memorandum ("11th Garlic Final") at Comment 2; see also Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China, 71 FR 16116 (March 30, 2006) and accompanying Issues and Decision Memorandum at Comment 2; see also Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the First Administrative Review, 71 FR 14170 (March 21, 2006) and accompanying Issues and Decision Memorandum at Comment 3A. The Department undertakes its analysis of valuing the FOPs on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry. See Glycine from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 70 FR 47176 (August 12, 2005) and accompanying Issues and Decision Memorandum ("2005 Glycine Final") at Comment 1. There

⁴ Wonderland did not provide argument with regard to public availability.

is no hierarchy for applying the above-stated principles. Thus, the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the “best” surrogate value is for each input. See Freshwater Crawfish Tail Meat from the People’s Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review, 67 FR 19546 (April 22, 2002) and accompanying Issues and Decision Memorandum (“Crawfish”) at Comment 2.

A. Product Specificity

In the Preliminary Results, we used prices for super-A garlic to value Respondents’ garlic bulb input. The Bulletin is published by the Azadpur APMC on each trading day and contains, among other things, a list of all fruits and vegetables sold on the previous trading day, the amount (by weight) of each fruit or vegetable sold on that day and a low, high and modal price for each commodity sold. For these final results we continue to find that the Bulletin contains data which is the most specific information on the record of these reviews to the input in question. The Department has concluded for the last several reviews that the vast majority of the evidence indicates that the size of the garlic bulbs is given significant value in the marketplace. See 11th Garlic Final. Thus, the Department determined it is important to use surrogate Indian garlic values reflecting sales of garlic bulbs of similar diameter to that of the Respondents’ merchandise during the POR.

In the most recently completed administrative review and in the Preliminary Results of the instant review, we explained that we found the information contained in the Bulletin to be the most specific to the input in question because it provides a surrogate value based on bulb size. First, we note that for the Preliminary Results, garlic ranging from 40 - 55mm was explained by the FMR (in its first market research) as size A garlic. See Letter from Program Manager, I.A., to The Fresh Garlic Producers Association, dated June 26, 2007, at Attachment 1 (pg. 21). Second, we note that, as of May 2006, the Bulletin contained a new category, Super-A, which was explained by the FMR (in its second market research) as 40mm garlic and above. See Petitioners’ April 3, 2007, submission at Exhibit 1 (number 6(1)(iii)). Subsequent to the Preliminary Results, we issued a questionnaire to the FMR asking it to clarify the overlap in sizes between A and Super A. In its response, the FMR states that: “Both ‘A’ and ‘Super A’ have bulb size above 40mm.” See Petitioners’ July 11, 2007, submission at Attachment I (pg. 5). Moreover, we note that the garlic entered into the United States by respondents during the POR is greater than 40mm.⁵ Thus, we have used surrogate values derived from this information.

In the Preliminary Results, the Department used only super-A values (from May to July 2006) in its calculations. For these final results, however, using respondents’ size data on the record (and the FMR’s clarification on the size ranges of A and Super A), the Department calculated a surrogate value based on the most appropriate Bulletin data. We have concluded that a more

⁵ For the garlic sizes sold by Respondents during the POR, see individual analysis memoranda.

accurate analysis would be for the Department to use all post-POR size A values averaged with super-A values (from May 2006 to January 2007, then deflated to the POR), for all respondents because both A and Super A grade garlic reflect bulb sizes greater than 40mm and using more data results in less anomalous results. See Memorandum to the File through Alex Villanueva, Program Manager, Office 9 from Javier Barrientos, Senior Analyst, Office 9: New Shipper Reviews of Fresh Garlic from the People’s Republic of China: Surrogate Values for the Final Results, dated September 20, 2007.

Finally, we note that while Petitioner argues that the “Super A” Agrifound Parvati bulb from the Indian state of Himachal Pradesh may be a clone of garlic of Chinese genetic origin, Petitioner has not provided evidence on the record that this bulb is of Chinese origin. Therefore, absent information confirming Petitioner’s belief, we cannot limit our surrogate value data selection to include only those data points from Himachal Pradesh.

B. Broad Market Average

We find that data from the Bulletin represents a broad market average. In past cases we have found official government publications to be reliable and credible sources of information. See e.g., Sebacic Acid From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 69 FR 75303 (December 16, 2004) and accompanying Issues and Decision Memorandum at Comment 1. We note that each Bulletin states that Azadpur APMC is an autonomous body of the government of the National Capital Territory (“NCT”) of Delhi. In the Preliminary Results, we noted that the Azadpur APMC (www.apmcazardpurdelhi.com) is the largest fruit and vegetable market in Asia and has become a “National Distribution Centre” for important Indian agricultural products such as garlic. Because the Azadpur APMC Bulletin is published by NCT, an Indian government entity, we find the Bulletin to be a reliable source of information for surrogate values. Therefore, we find Azadpur APMC’s claim to be India’s agricultural “National Distribution Centre” and its claim to be the largest agricultural market in India to be reliable and credible.

When calculating surrogate values it is the Department’s practice to use country-wide data instead of regional data when the former is available. See Wuhan Bee Healthy Co., Ltd. v. United States, Slip Op. 05-142 (CIT 2005) at 5. Moreover, we attempt to find the most representative and least distortive market-based value because the more broad-based the value, the greater the likelihood that the value is representative. 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. A careful examination of the Bulletin shows that agricultural products from all over India are sold at Azadpur APMC. Thus, we find that the Bulletin is a reliable and credible representation of a broad market average. We note that the data set used by the Department to calculate the garlic bulb surrogate value for grade A garlic contains over 270 points of data which represents millions of kilograms of garlic sold from seven Indian states (Uttar Pradesh - UP, Kota, Rajasthan - Raj, Madhya Pradesh - MP,

Punjab - Pun, Haryana - Har, Himachal Pradesh - HP). In addition, we note that the data set used by the Department to calculate the garlic bulb surrogate value for super-A contains over 200 points of data, which also represents millions of kilograms of garlic sold over a post-POR period of nine months from seven states (UP, Kota, Raj, MP, Pun, Har, HP). Thus, we find that the Bulletin is a reliable and credible representation of a broad market average.

C. Public Availability

Based on the record of this review, we find the Bulletin to be publically available. According to the market researcher, the Azadpur data is published daily, posted in the APMC's facilities for public viewing, is electronically archived and is available upon request. Furthermore, no party has challenged the availability, authenticity or completeness of this data. We have, in electronic form, Bulletins published for A and Super-A for the nine month period after the POR. While we note that the Bulletin is not readily available on the internet, it is readily available to its intended audience, wholesalers and buyers at Azadpur APMC in India.

D. Contemporaneity

The data points which capture A and Super A garlic values have been deflated in order to make them contemporaneous with the POR. It is the Department's normal practice when using a surrogate value that post-dates the POR to deflate that surrogate value to be contemporaneous with the POR. See 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) and accompanying Issues and Decision Memorandum at Comment 6. This is a logical application of data on the record to our calculation because, despite the lack of complete contemporaneity of the information, the values are the most reflective of this factor of production (FOP) on the record.

As noted above, there is no hierarchy in selecting the best information available to value a FOP. The Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the "best" surrogate value is for each input. See Crawfish at Comment 2. In this case, the bulb size significantly affects all normal values and drives the selling price. Therefore, valuing the raw garlic bulb input while considering size is key. See 11th Garlic Final at Comment 2. Regarding Wonderland's argument that the Bulletin data is post-POR data (*i.e.*, not contemporaneous), it would not be appropriate for the Department to disregard surrogate value information which is otherwise specific to the input in question solely on the basis that it is pre/post-POR data. See Notice of Final Determination of Sales at Less than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers from the People's Republic of China, 69 FR 20594 (April 16, 2004) at Comment 11.

E. Tax and Duty Exclusive

We find the Bulletin prices to be tax and duty exclusive. In the 11th Garlic Final we found that the Agmarknet data are tax-exclusive, noting that the Agmarknet project was conceived and implemented to provide Indian domestic farmers “nationwide market information for wholesale produce” by facilitating the collection and dissemination of market information to better price realization by the farmers,” thereby eliminating regional price distortions that might exist absent such relative information. See 11th Garlic Final and accompanying Issues and Decision Memorandum at Comment 2. The Bulletin is a subset of the Agmarknet data used in the last administrative review to value the whole garlic bulb. As noted above, the purpose of the Bulletin is to provide transparent agricultural pricing data to the public, *i.e.*, buyers and sellers. Therefore, we find that if Agmarknet data is tax and duty exclusive, the underlying source data, the Bulletin, must also be tax and duty exclusive. Furthermore, we note that there is no record evidence that the Azadpur APMC levies taxes or duties on the products sold at the APMC. However, for these final results, the Department deducted seven percent from the garlic bulb surrogate value to account for the market fees imposed by Azadpur APMC. See Prelim Surrogate Value Memo.

F. Other Arguments

Regarding Wonderland’s argument that the Azadpur APMC garlic bulb data represents the price of finished and packed garlic rather than raw garlic it processed and sold during the POR, we disagree. The Bulletin indicates that it covers only wholesale prices of agricultural products. In addition, the Bulletin does not provide any information indicating that wholesale garlic prices reflect garlic that is sold as finished or packed.

Regarding Wonderland’s arguments concerning Agmarknet as an alternative garlic bulb surrogate value, we disagree. We note that no Agmarknet values are on the record of this review. Section 351.301(c)(3)(ii) of the Department’s regulations allow interested parties to submit factor value information up to 20 days after the preliminary results. Consequently, we note that after the preliminary results, parties had an opportunity to place Agmarknet data on the record, but did not. The Department cannot use information that is not on the record of this review⁶ for purposes of valuing garlic bulb, and thus, we have declined to consider Agmarknet as an alternative garlic bulb surrogate value.

Comment 2: Surrogate Financial Companies

Petitioners note that the Department used the 2004-2005 financial statements of Limtex India Limited (“Limtex”), an Indian tea company, to value factory overhead, selling, general and

⁶ See Ames True Temper v. United States, Slip Op. 07-133 at 19 (CIT August 31, 2007).

administrative expenses, and profit for the Preliminary Results.⁷ See Memorandum to Alex Villanueva, Program Manager, Office 9, from Javier Barrientos, Case Analyst, Office 9, Re: New Shipper Review of Fresh Garlic from the People's Republic of China: Surrogate Values for the Preliminary Results dated April 23, 2007 ("Prelim Surrogate Value Memo"). Petitioners argue that the Department should use the financial statements of an Indian honey producer, Mahabaleshwar Honey Producers Co-Operative ("MHPC"), instead of Limtex, to derive the surrogate financial ratios for the final results.⁸

Petitioners argue that although the Department correctly calculated normal value based on an intermediate input valuation methodology which accounts for the critical material input in producing subject merchandise, Limtex is a fully integrated producer of tea, and is, thus, an inappropriate surrogate company from which to derive surrogate financial ratios.⁹ Petitioners claim that using the financial statements of a company that both grows and processes the main agricultural input is not appropriate in this case because in this proceeding, the Department used an intermediate methodology that values the main raw material input. Therefore, Petitioners contend that the Department should use the financial statements of MHPC, a non-integrated honey processor, because the production process for honey is similar in complexity and level of integration for garlic processing.

Petitioners argue that the Department has used MHPC's financial statements for the honey case since its initiation and thus it has been established as a suitable surrogate company. See, e.g., Honey from the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Reviews, 71 FR 34893, 34895 (June 16, 2006). Petitioners contend that honey, as a product and how it is processed, is more similar to garlic than tea. Petitioners note that section 351.408(c)(4) of the Department's regulations direct the Department to value financial ratios with nonproprietary data collected from producers of identical or comparable merchandise in the surrogate country and therefore honey is a more appropriate choice than tea. Petitioners observe that the statute does not define "comparable merchandise," but the Department considers whether products have similar production processes, end uses, and physical characteristics. See Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China, 70 FR 24502 (May 10, 2005) and accompanying Issues and Decision Memorandum ("Isos") at Comment 3. Petitioners contend that the Department has evaluated the complexity and duration of the processes in addition to the types of equipment used in production when determining whether a company has a similar production process. See Glycine from the People's Republic of China: Final Results of

⁷ The Department used the same financial ratios in the previous administrative and new shipper reviews. See 11th Garlic Final at Comment 3.

⁸ See Petitioners' submission dated May 21, 2007, containing MHPC's 2005-2006 financial statements.

⁹ Petitioners note that Limtex's financial report shows that it is a grower of tea leaves that are used in the production of processed tea. See Petitioners' submission dated June 15, 2007, at 17.

New Shipper Administrative Review, 66 FR 8383 (January 31, 2001) and accompanying Issues and Decision Memorandum at Comment 7. Petitioners contend that, in this proceeding, the complexity, duration, and level of sophistication of processing equipment for the production of fresh garlic is most similar to that of honey production process. See Petitioners' May 21, 2007, submission at Attachment F.

Petitioners further note the importance of the financial company's comparability to the respondents' experience (i.e., the level of integration between respondents and the surrogate producer). See Isos at Comment 3 (where the Department did not use HSH's financial information because it determined that HSH is not at a comparable level of integration as Jiheng and Nanning, and therefore HSH's financial data would be less comparable to that of Jiheng and Nanning). Thus, Petitioners contend that the Department should use MHPC's financial statements because they are a non-integrated processor of a comparable agricultural product. Petitioners state that, in the alternative, the Department should average the financial ratios of MHPC and Limtex. Petitioners argue that the Department has the discretion to choose among various surrogate sources when faced with the decision to choose between two reasonable alternatives.¹⁰ Petitioners contend that the record does not support that Limtex's financial experience is favored over that of MHPC and therefore the Department should either reject Limtex's financial statements or use them in conjunction with those of MHPC.¹¹

Shenzhen Xinboda Industrial Co., Ltd. ("Xinboda") and Wonderland argue that the Department should continue to use Limtex's financial statements to derive surrogate financial ratios in the final results of this proceeding. Xinboda and Wonderland contend that, despite Petitioners' argument that honey and garlic have similar production processes, there is no record evidence that honey is comparable to garlic. First, Wonderland argues that contrary to Petitioners' attempt to draw similarities between honey and garlic production processes, in their submission dated May 21, 2007, the actual process and equipment used in production of garlic and honey are very different. Wonderland claims that honey production requires electrical pumps, stainless pipes, stainless tanks, filters, and metal packing drums in an enclosed structure, none of which is used in the processing of fresh garlic. Wonderland notes that the production process of fresh garlic includes tables, scissors, and cardboard packing cartons, which normally would take place under a temporary roof or unused warehouse. Second, Wonderland contends that the production diagram of Shanghai Bloom International Trading Co., Ltd., a honey producer, included in the Petitioners' May 21, 2007, submission, does not represent the production process of fresh garlic

¹⁰ In support of their argument, Petitioners rely upon FMC Corp. v. United States, 2003 Ct. Intl. Trade LEXIS 19, *7 (CIT Feb. 11, 2003) aff'd w/out op., 2004 U.S. App. LEXIS 3096 (Fed. Cir. Feb 9, 2004) (citing Technoimportexport, UCF America Inc. v. United States, 783 F. Supp. 1401, 1406 (Ct. Intl. Trade 1992)) (when Commerce is faced with the decision to choose between two reasonable alternatives and one alternative is favored over the other in their eyes, they have the discretion to choose accordingly).

¹¹ Petitioners cite to 2005 Glycine Final at Comment 2 (for purposes of valuing overhead, SG&A, and profit, where such information is available, the Department may rely on financial statements of multiple surrogate companies).

or even that of other honey producers. Due to these differences in production process between honey and fresh garlic, Wonderland contends that the Department should continue to use Limtex's financial statements for the surrogate financial ratios to calculate normal value. Additionally, Wonderland attached and incorporated as its own the comments submitted by a respondent in the 10th new shipper review, which argued for the use of Limtex's surrogate financial ratios in that segment. See Wonderland's rebuttal comments (dated June 22, 2007) at Attachment A.

Xinboda also urges that, consistent with past practice, the Department should continue to use Limtex's financial statements to calculate surrogate financial ratios. Xinboda notes that the Department has determined in prior administrative and new shipper reviews of garlic from the PRC that tea is a horticultural, agricultural product that is not processed or preserved prior to sale and, thus, the financial statements of an Indian tea producer are an appropriate surrogate for use in calculating financial ratios.¹² Xinboda claims that Petitioners have not presented any new evidence on the record suggesting that the Department depart from its well-established practice of using the financial statements of an Indian tea producer to calculate surrogate financial ratios.

Moreover, Xinboda notes that the Department has previously rejected honey as comparable to garlic regarding production processes because garlic processing does not include extensive processing and preserving, further illustrating the differences between honey and garlic production. Xinboda contends that financial ratios based on a significantly different production process would necessarily distort the Department's margin calculations, as explained in the 11th AR Final (where the Department stated that garlic processing does not require any equipment similar to what is used in the processing of honey, which leads the Department to question the purported similarity of the production experience of garlic and honey). Xinboda adds that Petitioners have not provided any evidence suggesting that the complexity of tea production is dissimilar to that of garlic production. Xinboda also argues that Petitioners do not address the fact that honey is an animal byproduct, whereas both tea and garlic are agricultural products, thus more closely related and share similarities such as the need for soil, water, fertilization. Xinboda further argues that Petitioners did not account for the other differences between garlic and honey such as packaging, which is more complex for honey. In sum, Xinboda notes that Petitioners do not address the key facts on the record or past precedent to support their claim that a honey producer is an appropriate surrogate company from which to derive financial ratios, nor do Petitioners offer the Department new evidence or argument to suggest that the Department should deviate from its preference to use Limtex for surrogate financial data.

Xinboda notes that Petitioners made an identical argument in the 11th AR Final based upon the same Limtex financial statement under consideration in this new shipper review, with which the

¹² Xinboda relies upon 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) ("8th Garlic Final"); Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 34082 (June 13, 2005) ("9th Garlic Final"); and 11th Garlic Final.

Department ultimately disagreed. Consequently, Xinboda urges the Department to similarly determine in this review that Limtex is not an integrated tea producer for those reasons described in the 11th AR Final. Specifically, Xinboda notes that the Department addressed Limtex's status as a tea processor upon review of Limtex's financial statements and found that there was no conclusive evidence that Limtex grows the majority of its tea. See 11th AR Final at Comment 3. Therefore, Xinboda urges the Department to continue to use Limtex's financial statements to derive surrogate financial ratios.

Department's Position:

We continue to determine that the 2004-2005 Limtex financial statements are the best available information on the record to value overhead, SG&A, and profit. In calculating surrogate values for overhead, SG&A and profit, the Department's policy is to use data from market-economy surrogate companies based on the specificity, contemporaneity, and quality of the data. See, e.g., Certain Preserved Mushrooms From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 72 FR 44827 (August 9, 2007) and accompanying Issues and Decision Memorandum at Comment 5. The Department's practice is, where information is available, to derive the overhead, SG&A, and profit values from producers of merchandise that is identical or comparable to the subject merchandise. See 2005 Glycine Final, at Comment 2. Consistent with the 11th AR Final, we continue to find that the tea industry is comparable and representative of the financial experience of the respondents' because tea is not highly processed or preserved prior to its sale.

First, we disagree with Petitioners that Limtex is an integrated tea producer. Our determination in the 11th AR Final that Limtex in fact purchased most of its raw material inputs still holds:

an analysis of Limtex's financial statements reveal that Limtex purchased the majority, if not all, of its tea. Specifically, Schedule 16 for Materials shows line items of purchases of tea, domestic, import, and others. See Prelim Surrogate Value Memo at Attachment 1, pages 19 and 23. Additionally, Schedule 21 (Notes on Accounts) further supports that Limtex purchased 10,837,452 kg of tea and produced 605,600 kg. Id. Therefore, the Department finds that Limtex is mostly a tea processor, and therefore, can be used to value the intermediate product.

See 11th AR Final at Comment 3.

We note that the financial statements of both Limtex and MHPC are sufficiently contemporaneous, publicly available and from processors of intermediate products. However, as the Department previously stated in the 11th AR Final, while the statute does not define "comparable merchandise" in selecting surrogate values for overhead, SG&A and profit, the Department has considered whether the surrogate company's products have similar production processes, end uses, and physical characteristics as the respondents'. Id.; see also Isos at Comment 2.

As Xinboda noted, the Department has previously determined that tea production is similar to that of garlic.¹³ In support of Petitioner's argument to use the financial statements of a honey producer, MHPC, Petitioners placed the production process and description from one honey new shipper on the record of the instant reviews. See Petitioners' January 16, 2007, submission. According to Petitioners, the fact that honey processing is limited to an electrical pump, a filter, and finished-product drums makes it similar in complexity and integration with processing garlic. However, as in previous segments of this proceeding, Petitioners fail to support their statements with factual information on how processing tea is more complex than honey and therefore, how honey production is more similar to garlic. As we previously noted, tea and garlic are both agricultural products grown in the ground which need water, fertilizer, and other similar inputs to thrive, while honey is an animal by-product. See 11th AR Final at Comment 3. The Department has already determined that garlic processing does not require any equipment similar to what is used in the processing of honey. Therefore, the Department finds no substantial evidence on the record to support the argument that using the financial statement of MHPC instead of the financial statements of Lintex would result in more accurate financial ratios.

Comment 3: Hongqiao Margin Calculations

Hongqiao argues that the packing material weight of the mesh bag was erroneously accounted as an additional packing factor, resulting in a double accounting for the mesh bag packing material in the antidumping duty calculation. In addition, Hongqiao contends that the transportation freight for the mesh bag was double counted when the weight of the Inner Small Mesh Bag was included as a factor.

Petitioners did not comment on this issue.

Department's Position: The Department inadvertently included "Inner Small Mesh Bag" as a packing factor in the Preliminary Results. Therefore, for the final results, we will not include "Inner Small Mesh Bag" (and its freight) as a packing factor. See Honqiao Final Analysis Memo.

¹³ See 8th Garlic Final at Comment 8 (the Department determined that processing tea is more similar to processing garlic than mushroom producers because tea is not highly processed or preserved prior to sale); see also 9th Garlic Final at Comment 5 (the Department found coffee production to be more complex than tea or garlic production because it involves varying processing methods, some which require using extensive machinery and water); and 11th AR Final at Comment 3 (the Department determined that honey processing is not similar to garlic processing with respect to comparability of production process, end use and physical characteristics).

RECOMMENDATION:

Based on our analysis of the comments received, we recommend adopting all of the above changes and positions, and adjusting the margin calculation programs accordingly. If accepted,

we will publish the final results of these new shipper reviews and the final weighted-average dumping margins in the Federal Register.

AGREE_____

DISAGREE_____

David M. Spooner
Assistant Secretary
for Import Administration

Date_____