

DATE: June 9, 2008

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 Final Results of the 12<sup>th</sup>  
Administrative Review: Fresh Garlic from the People's Republic  
of China ("PRC")

### **SUMMARY**

We have analyzed the case and rebuttal briefs submitted by the Petitioners<sup>1</sup>, Dong Yun<sup>2</sup>, Shanghai LJ<sup>3</sup> and Qingdao Saturn<sup>4</sup> in the antidumping duty administrative review of fresh garlic from the PRC. The Department of Commerce ("Department") published the preliminary results for this review on December 10, 2007. See Fresh Garlic from the People's Republic of China: Notice of Preliminary Results and Preliminary Partial Rescission of the Twelfth Administrative Review, 72 FR 69652 (December 10, 2007) ("Preliminary Results"). The period of review ("POR") is November 1, 2005, through October 31, 2006. Following the Preliminary Results and analysis of the comments received, we made changes to the margin calculations. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is a complete list of issues for which we received comments and rebuttal comments by parties:

#### **General Issues:**

##### **Comment 1: Intermediate Input Methodology**

##### **Comment 2: Garlic Bulb Surrogate Value**

###### **A. Product Specificity**

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<sup>1</sup> The Fresh Garlic Producers Association: Christopher Ranch L.L.C.; The Garlic Company; Valley Garlic; and Vessey and Company, Inc. ("Petitioners").

<sup>2</sup> Jinxiang Dong Yun Freezing Storage Co., Ltd. ("Dong Yun").

<sup>3</sup> Shanghai LJ International Trading Co., Ltd. ("Shanghai LJ").

<sup>4</sup> Qingdao Saturn International Trade Co., Ltd. ("Qingdao Saturn"). Qingdao Saturn only filed a case brief.

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

**Comment 3: Surrogate Financial Ratios**

**Comment 4: Labor Surrogate Value**

**Comment 5: By-product Offset**

**Company-Specific Issues:**

**Comment 6: Individual Margin Calculation for Qingdao Saturn**

**DISCUSSION OF THE ISSUES**

**General Issues:**

**Comment 1: Intermediate Input Methodology**

Dong Yun argues that the Department should not have used an intermediate input methodology (“IIM”) in the Preliminary Results and should have instead relied on Dong Yun’s growing factors of production (“FOPs”) because they were fully and accurately reported. Dong Yun specifically responded to six issues supporting the Department’s decision to use an IIM: labor hours, yield loss, garlic seed usage, unknown variables, land use, and the seasonality/timing of the various stages of production.

Dong Yun contends that the Department should accept its labor data because it is Dong Yun’s policy not to allow farm workers to work more or less than 10 hours per day, that partial days are not allowed, and therefore, hourly records are not needed. Additionally, Dong Yun states that it hires farm workers for each day’s work as needed from an available supply of those seeking work, so there is no reason to maintain absence records because absences, in the record-keeping sense of the word, do not occur. For these reasons, Dong Yun argues that the labor data provided to the Department is both accurate and complete and should be accepted as the best available information.

Concerning the issue of yield loss, Dong Yun argues that the Department should utilize Dong Yun’s more simple but accurate methodology to account for yield loss rather than creating its own methodology. Dong Yun argues that losses do not need to be measured at each stage of production and processing but can instead be calculated by dividing total seed usage by the number of end products, and then dividing the result by the product-specific finished quantity as it reported in its questionnaire responses. Dong Yun gives the example that by dividing the total seed usage of 250 kilograms (“kg”) by three (for the three end products of fresh garlic, peeled

garlic, and non-subject), and then taking that result (83.33 kgs) and dividing it by the total quantity of the finished product (900 kgs for fresh garlic and 650 kgs for peeled garlic) that the results are identical to those resulting from the Department's methodology (0.0926 seed usage per kg of fresh garlic and 0.1282 seed usage per kg of peeled garlic).<sup>5</sup> Therefore, Dong Yun states that the Department should accept its reported methodology because it reported garlic seed usage and quantities of finished product. Moreover, Dong Yun notes that the issue of mixed garlic seed use is not applicable to its production.

Dong Yun argues that the Department's claim of unknown variables due to potential gains in nutrients, herbicides, pesticides, or water in the soil resulting from off-season farming on the land is irrelevant and unreasonable. Dong Yun states that it is not possible to determine these potential factors of production, nor is it reasonable to assume that these exist, citing instead the potential of natural causes for the presence of nutrients, herbicides, or water in the soil. Dong Yun states that it has reported 100 percent of the FOPs it utilized and should not be required to report those which are speculative.

Regarding the Department's statement that water consumption is an unknown variable because there are no usage meters on the water pumps, Dong Yun argues that it uses a formula provided by the pump manufacturer to calculate the amount of water pumped per time period. Dong Yun states that since the Department does not state that either the manufacturer's formula, or Dong Yun's use of it, are incorrect, that this should be considered the best available information and accepted by the Department.

Regarding land use, Dong Yun argues that the Department was provided with a more detailed map (than in previous reviews) showing the exact location of the farms, and that the contract with the farm owners states the precise amount of land under lease. Dong Yun states that this is the best available information on the record and cannot be ignored. Additionally, Dong Yun states that it reported the exact dimensions as measured in mus in the leasing contracts for each farm.

Dong Yun argues that the fact that production takes place over a nine-month period is not a true problem because all that is relevant is that the accounting books tie to the audited financial statements, which is the case. Dong Yun argues that there are no specific recording and accounting standards of the Chinese garlic industry on the record, and therefore, it is not possible to find that Dong Yun's records are inaccurate. Dong Yun states that it maintains its accounting records in accordance with Chinese GAAP (generally accepted accounting principles) and has been successfully verified by the Department in prior reviews. Dong Yun argues that since the Department did not attempt verification for this review period, and its previous verification was successful, the fact that the Department stated in its IIM Memo<sup>6</sup> that "there is no document trail through which the Department may conduct such reconciliations" is not an issue and not applicable to Dong Yun.

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<sup>5</sup> See Dong Yun's case brief at 5-7.

<sup>6</sup> See 12<sup>th</sup> Administrative Review of Fresh Garlic from the People's Republic of China: Intermediate Input Methodology, dated November 30, 2007 ("IIM Memo").

Dong Yun concludes that the demands made by the Department before it will consider using a respondent's growing data are irrelevant, unreasonable, arbitrary, and punitive and therefore contravene the statute.

Shanghai LJ argues that the Department should abandon the IIM it has adopted in recent garlic reviews, and should derive Shanghai LJ's normal value ("NV") by incorporating the farming factors from Henan Xiangcheng Sunny Foodstuff Factory ("Sunny"), its supplier. Shanghai LJ states that the IIM exaggerates NV and creates a dumping margin when in fact none exists, noting that it recently received a zero dumping margin in its new shipper review ("NSR"), and both it and Sunny have maintained consistent pricing and production operations, respectively. Shanghai LJ contends that the Department's memorandum outlining the use of the IIM is generalized and not applicable to Shanghai LJ's experience in the instant review. Shanghai LJ states that if there were areas that required additional information, it would have been willing to provide it in additional supplemental questionnaire responses, and that any remaining concerns could have been addressed at verification.

With respect to labor, Shanghai LJ contends that each of Sunny's attendance sheets identifies each employee, tracks an employee's daily work attendance, and that Sunny's director has certified that its employees work eight hours per day. Shanghai LJ states that it fully answered all questions regarding labor asked by the Department in its original and supplemental questionnaires. Shanghai LJ argues that there is no justification to reject the actual farming FOPs based on unspecified inadequacies in Sunny's labor records or procedure.

Regarding yield loss, Shanghai LJ notes that the Department found its reporting to be inadequate since it did not record the weight at the time of harvest, at the time of field drying, and at the time of dry storage. Shanghai LJ counters that the yield loss incurred at these earlier stages is not relevant to the calculation, since all FOPs are divided by the net weight of the garlic at the end of the harvest/dry storage process, or later; Shanghai LJ thus notes that any theoretical yield loss is already taken into account since the net dry weight of the garlic is used to allocate FOPs up to that point. Shanghai LJ notes that subsequent yield losses for later stages are provided. Additionally, Shanghai LJ states that the record clearly shows that no off-season activities take place on the land used to grow garlic.

Shanghai LJ contends that it accurately reported its irrigation water FOP even though it does not have a water meter installed on the well. Shanghai LJ states that it can accurately compute water consumption by extrapolating it from diesel consumption, since the pump produces a fixed quantity of water each hour and consumes a fixed quantity of diesel. Shanghai LJ argues that its irrigation water FOP is therefore not an estimate but a calculated figure based on objective data.

Regarding the use of garlic seed, Shanghai LJ states that it provided FOPs for each seed source, and reported them separately in its FOP data. While Shanghai LJ states that perhaps in prior reviews other growers had difficulty in accounting for self-produced versus purchased seed, this issue is irrelevant to its experience in the current POR. Shanghai LJ also states that the Department's concerns about the cyclical growing season are unfounded, and that its reported data encompass the entire time period. Moreover, Shanghai LJ notes that it has provided complete and accurate land usage data, and that even though during the POR the total area of

land changed, this is irrelevant for the FOPs derived for the POR, since this change occurred after the 2005-2006 harvest. Shanghai LJ contends that the Department did not ask for a formal survey or some definitive demonstration of the plot of land under cultivation, and thus concludes that there is no reason in the content or format of its reported land use justifying the Department's use of an IIM.

Shanghai LJ contends that the IIM is not an intermediate methodology at all, and that the garlic bulbs represent the subject merchandise itself. By employing the IIM, Shanghai LJ posits that the Department is essentially adopting a price-to-price analysis and must follow the statutory requirements for such a method pursuant to Section 773(c)(2) of the Act, and cannot use actual subject merchandise as an FOP in standard NME methodology by adding a yield loss and processing FOPs.

Petitioners argue that Dong Yun's contentions with regard to the Department's use of the IIM are without merit and should be rejected. Specifically, Petitioners state that Dong Yun presents no record evidence that their daily attendance records showing a "day's work" indicates a 10-hour workday and so the Department's finding that Dong Yun's records "do not have any indication of the 10-hour workday" should stand.

Regarding Dong Yun's reporting of yield loss, Petitioners argue that the Department's methodology to account for yield loss at each stage of production and processing is the most accurate method. Petitioners state that the product experiences different yield losses during different stages of production and to treat the entire production process as a single-stage function would "reduce the accuracy of the overall calculation,... omit a significant cost element from the normal value process and misstate garlic consumption."<sup>7</sup> Additionally, Petitioners argue that even assuming Dong Yun's approach is reasonable (which it is not), the Department's methodological approach is at least equally as reasonable and would be legally upheld, according to judicial precedent.<sup>8</sup>

Petitioners state that the Department's reason for concern that off-season activity may not have been properly accounted for in Dong Yun's FOPs was based on the known structure of the Chinese garlic industry and the understanding that non-garlic inputs can have an effect on garlic production. Therefore, Petitioners argue, since Dong Yun is unable to track those off-season inputs, and utilizing the IIM does not require that those inputs be accounted for, the Department was correct in opting for the IIM as the most accurate method using the best available information.

Petitioners contend that it is undisputed record fact that Dong Yun's actual water usage is unknown as the Department states because Dong Yun's water consumption was based on assumptions of water pump capacity and standard energy losses rather than actual data.

Petitioners state that although the Department cited "no objection" to Dong Yun's reporting of garlic seed, knowing the quantity of garlic seed at the start of the farming stage does not resolve

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<sup>7</sup> See Petitioners' rebuttal brief at 3.

<sup>8</sup> See *Id.* at 3-4.

the issue of yield losses at each stage of the production process and therefore does not undermine the overall analysis as to the questionability of other pre-harvest FOP's.

Petitioners state that the Department is not legally required to verify the reporting of each respondent in each review and, in fact, it is the respondent who bears the burden of presenting its information to the Department in a complete and accurate record within the statutory timeline. Petitioners argue that Dong Yun's suggestion that the Department dismiss its concerns for pre-harvest FOP consumption because of the absence of verification is unreasonable and would force the Department to ignore past precedent and knowledge of Dong Yun's record-keeping. Moreover, the Petitioners argue that the Department prepared a detailed memorandum presenting the facts and explaining its decision to use the IIM during the 11<sup>th</sup> Review, and given that this decision was based in part on the verification of FOP data that occurred during the instant POR, clearly requires that the IIM should continue to be used.

Petitioners contend that the Department's judgment is simply different from Dong Yun's as to whether their land use records were sufficient or not. However, Petitioners contend that this is important and relevant because there can be variations in land use on a yearly basis that make quantifying the related off-season inputs that much more difficult for the Department when land use records are incomplete or even slightly inaccurate. Petitioners also note that accurate land use data are important in determining accurate surrogate values for comparable land in the surrogate country. Moreover, Petitioners note that routine record-keeping that clearly identifies specific land boundaries within which garlic was grown necessitates a higher standard than post hoc assertions as to the size and location of the land used.

Petitioners state that the IIM is not a price-to-price analysis as Shanghai LJ contends. Petitioners note that the intermediate input is the raw garlic bulb, prior to processing, while the end product sold by Respondents undergoes additional processing and packaging. Petitioners state that there is no evidence on the record that indicates that the fresh garlic sold in India (e.g., that reflected in the Azadpur APMC data), is as highly processed as that produced for export in China.

Petitioners argue that Shanghai LJ's farming FOPs are not usable, and notes that its reported labor quantities depend on a certification from Sunny's director that each workday is eight hours. Petitioners state that this does not support the number of hours reported in a workday, which is the deficiency cited by the Department. See IIM Memo at Appendix A. Petitioners note that for yield loss, even if Shanghai LJ's characterization is correct, it ignores the inability to cross-check dry storage weight records against upstream processes, which would be standard analysis in evaluating a respondent's FOP information. Petitioners further note that while the fact that Shanghai LJ's land lies fallow in the off-season may reduce (though not eliminate) the potential impact of pre-POR activities, the issue remains of determining appropriate surrogate values for comparable land in India (i.e., fallow land could perhaps have a different surrogate value). Petitioners assert that such an unquantifiable variable underscores the reasonableness of the IIM. Petitioners contend that the analysis of Shanghai LJ's reported water, garlic seeds, and land size and location are similar to those discussed for Dong Yun, all contributing to the totality of circumstances in favor of using an IIM.

Petitioners state that Shanghai LJ's contention that the Department should follow section 782(c)(2) of the Act to determine NV is misplaced, since that section of the statute provides an alternative method for determining NV, when there is no FOP data available, whereas the IIM does use FOP information for calculating NV. Petitioners note that the Department addressed this argument in the 11<sup>th</sup> administrative review. Lastly, Petitioners assert that Shanghai LJ's experience in a prior review should not be a benchmark for whether the IIM is accurate, and that such a contention is without precedent or inherent logic. Petitioners note that production input values, expenses, and selling prices can and do vary over time, and it is just as logical to suggest that the IIM-based margin calculation demonstrates the inaccuracy of earlier methodologies.

Petitioners rebut Dong Yun's assertion that the IIM is unwarranted by the facts. Petitioners contend that the issue is not whether Dong Yun has specific business reasons for tracking labor differently, but rather, whether the Department is able to verify accurately the respondents' labor hours. Petitioners point out the Department has found during previous on-site verifications that it is not possible to verify Respondents' claimed labor hours and therefore adopted the IIM as a way to accurately value respondents' FOPs.

Petitioners further argue that, due to its variability and vagaries, fresh garlic production in China is not amenable to accurate verification. Petitioners assert that the Department is not penalizing Respondents by using the IIM, but rather, using the most accurate actual data from Respondents. In other words, Petitioners contend that the Department's decision to value the garlic bulb, the intermediate input, yields more accurate results than using the upstream factors of production. Petitioners further assert that the Department's use of the IIM is fully consistent with the Department's decisions in previous cases.<sup>9</sup>

Petitioners argue that the application of the IIM is not a response to the reliability of individual respondents' reported FOPs. Petitioners state that the Department has concluded, based on the Department's previous verifications of upstream FOPs, that, due to the uniqueness of the agricultural production of this product, the IIM is the most accurate methodology for all respondents.

### **Department's Position:**

For the final results, based on our examination and analysis of both mandatory Respondents' data, our findings in the Preliminary Results and the IIM Memo, and parties' arguments, we continue to find that, based on the totality of circumstances, employing the IIM to calculate Respondents' normal values is appropriate and produces the most accurate antidumping calculation.

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<sup>9</sup> See Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol From the People's Republic of China, 68 FR 47538 (August 11, 2003), and accompanying Issues and Decision Memorandum at Comment 1; 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), and accompanying Issues and Decision Memorandum at Comment 3; 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 2.

The Department conducted a thorough analysis of each respondent's reported FOPs and attached to the IIM Memo company-specific appendices citing the issues of concern and noting where the Respondents' respective questionnaire responses supported our determination. As explained in detail below, we found that, consistent with prior review periods, Respondents in the garlic 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 accurately quantify, report and substantiate this information. Second, we found problems with Respondents' ability to report yield loss resulting 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, Dong Yun leases the land on which the garlic is grown, and it reports no specific or detailed knowledge of the off-season crops produced on such leased land or the impact that residual inputs (e.g., nutrients, pesticide, herbicide, water) have had on their garlic crops. Finally, we determined that Respondents maintained their books and records such that they both do not report or account for all of the relevant information necessary to grow and harvest garlic, significantly inhibiting the Department's ability to analyze the reported information. See IIM Memo.

### **Dong Yun**

With regard to Dong Yun's arguments, we agree the issue of mixed garlic seed usage does not apply to Dong Yun. See IIM Memo at Appendix B. However, Dong Yun's overall argument that 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 is contradicted by record evidence. For instance, the record clearly demonstrates that Dong Yun does not record the actual labor hours worked, as explained in detail in the IIM Memo at the "Labor" section of Appendix B:

We note that the official attendance sheets do not have any indication of the 10-hour workdays each individual worked. See SCDQR at Exhibit 26. We also note that Jinxiang Dong Yun's farm regulation, which explains the 10-hour work days, does not report a date of when the regulation was in affect. Jinxiang Dong Yun explained that its workers start work at around 6:30am to 7:00am and stop around 6:30pm to 7:00pm, with workers getting paid on a daily rate. See SCDQR at 41. Jinxiang Dong Yun also stated that its workers work 10-hour days, with a two-hour lunch time. See SCDQR at 42 and Exhibit 25; see also Jinxiang Dong Yun's September 20, 2007 Supplemental Section D questionnaire response ("SSDQR") at 8. Thus, Jinxiang Dong Yun reported labor hours that are estimated using average working hours per day that are based on a ten-hour workday and thus, not actual labor hours.

We also find that, for water usage, Dong Yun's reported data are an extrapolation based on a formula that employs unsupported and undocumented assumptions. See IIM Memo at Appendix B: "Jinxiang Dong Yun stated that it reported the theoretical irrigation water consumption based on the electricity consumption and capacity of the water pump, minus a 10 percent assumption of

electrical waste reported by the power company (Jinxiang Dong Yun reported that the power company certified a 10-12 percent waste based on the wire structure).”

For land use, the record shows that Dong Yun cannot accurately report the precise land area under cultivation for its 11 different farms:

The land boundaries of Jinxiang Dong Yun’s farms are difficult to ascertain because Jinxiang Dong Yun did not provide detailed maps of their exact dimensions and, according to Jinxiang Dong Yun, there are no detailed maps clearly marking territories. See SCDQR at Exhibit D-10; see also SSDQR at 2. Additionally, the amount of land used by Jinxiang Dong Yun to grow garlic changes seasonally. See SCDQR at Exhibit D-10.

See IIM Memo at Appendix B.

The Department’s concern regarding off-season activity that may not have been properly accounted for in Dong Yun’s FOPs was based on the known structure of the Chinese garlic industry and the understanding that non-garlic inputs can have an effect on garlic production. Thus, the reported upstream inputs used to produce the raw garlic bulb are not entirely accurate and do not account for off-season factors. The factual information provided on the record by Dong Yun, which does not account for any off-season factors, supports our decision that it is appropriate to calculate Dong Yun’s normal value using the IIM since it does not require that those inputs be accounted for.

For yield loss, we agree that Dong Yun accurately calculated its processing yield loss for fresh garlic using information kept in the normal course of business. However, Dong Yun does not record the weight of the garlic upon harvest. Instead, it records the weight of the harvested garlic at the beginning of dry storage, after the roots and stems have been trimmed,<sup>10</sup> obviating the ability to derive accurate yield loss figures for loss that occurred prior to dry storage, and as Petitioners note, the product experiences different yield losses throughout the different stages of production, and consequently takes in different amounts of the associated inputs in the different stages. Therefore, we continue to find that we do not have the information necessary to capture accurately a proper yield loss for Dong Yun’s margin calculations.

### **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. See IIM Memo at Appendix A. We note, however, that there remain several concerns which support the continued use of the IIM for Shanghai LJ. For labor, we find that despite its assertions, record evidence shows that 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. The Department observed that:

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<sup>10</sup> See IIM Memo, at the “Yield Loss” section of Appendix B.

Based on a review of the aforementioned attendance sheets, Shanghai LJ reported that its workers worked 8-hour days, which is represented by a checkmark in the attendance records. We note that the official attendance sheets do not have any indication of the 8-hour workdays each individual worked. Thus, Shanghai LJ reported labor hours that are estimated using average working hours per day that are based on an 8-hour workday, not actual labor hours. Shanghai LJ did not provide any supporting documentation for its reported 8-hour workday.

See IIM at Appendix A. For yield loss, similar to Dong Yun, we agree that Shanghai LJ accurately calculated its processing yield loss for fresh and peeled garlic using information kept in the normal course of business. However, it does not record the weight at all for any of the earlier harvesting stages, obviating the ability to derive accurate yield loss figures for loss that occurred during dry storage, and as Petitioners note, it ignores the inability to cross-check dry storage weight records against upstream processes, which would be standard analysis in evaluating a respondent's FOP information. Specifically, Shanghai LJ does not record the weight of the garlic upon harvest. Instead, it records the weight of the harvested garlic at the beginning of cold storage, after it has been dried in the field and after the roots and stems have been trimmed.<sup>11</sup> Therefore, we continue to find that we do not have the information necessary to capture accurately a proper yield loss for Shanghai LJ's margin calculations.

For total land usage, we noted in Appendix A of the IIM Memo that "while Shanghai LJ reported the total land area under cultivation during the POR, based upon the map it provided, the boundaries of Shanghai LJ's farm are difficult to ascertain. See SACDSQR at Exhibit SA-3." The map Shanghai LJ submitted neither specified the total land area nor was fully translated. While Shanghai LJ contends that we did not ask for a "formal land survey," it is incumbent upon a respondent to provide the Department with the information necessary to ascertain accurate land usage. For water consumption, while Shanghai LJ disputes that its reported figure is not an estimate, its water usage, like that of Dong Yun, is in fact an extrapolation based on a formula that employs unsupported and undocumented assumptions (e.g., Shanghai LJ provided no supporting documentation regarding the amount of water the pump produces per hour and the amount of diesel used by the pump for a given amount of time, both of which are used in the formula).

We disagree with Shanghai LJ's assertion that the IIM is a de facto price-to-price analysis and that the Department, in not separately valuing each and every FOP, is bound by section 773(c)(2) of the Act. We note that this issue was addressed in the 11<sup>th</sup> Garlic Final<sup>12</sup> at Comment 1. Specifically, the section of the Act Shanghai LJ references describes an alternative to the standard FOP analysis, which is only applied should the Department conclude that it simply is unable to apply the FOP analysis to a Respondent's overall reported data. As described below,

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<sup>11</sup> See IIM Memo, at the "Yield Loss" section of Appendix A.

<sup>12</sup> 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 ("11<sup>th</sup> Garlic Final").

the intermediate methodology addresses the Department's concerns as to the Respondents' harvest factor data, which still allows for the application of an FOP analysis under section 773(c)(1)(B) of the Act using the intermediate garlic bulb input and Respondent's processing FOP data. Thus, there is no need to apply section 773(c)(2) of the Act. The IIM, as Petitioners note, has been used in several other cases.

## **General**

Regarding Respondents' arguments that the Department has set a standard for reporting FOPs that no agricultural company can meet, as noted in the 11<sup>th</sup> Garlic Final:

we do not agree that we are creating overly burdensome, impossible or additional record keeping requirements. The purpose of our detailed analysis of each respondent's reported FOPs, as articulated in the Intermediate Product Memo and summarized above, is to determine whether each respondent can substantiate its reported FOPs with its internal accounting records. Based on the analysis articulated in the Intermediate Product Memo 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 Memo, we will revisit this issue in future reviews and consider whether to use a respondent's reported FOPs in the calculation of NV if the respondent 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.

See 11<sup>th</sup> Garlic Final at Comment 1.

## **Comment 2: Garlic Bulb Surrogate Value**

### **A. Product Specificity**

Dong Yun notes that it uses garlic for processing and sells the processed garlic in container-load quantities (22,000 kgs each), while the garlic bulb prices the Department used were for 40kg sacks, which results in a higher per-kg value. According to Dong Yun, since it sells the subject merchandise in full container loads, it would also purchase the intermediate product in similar large quantities. Dong Yun thus contends that import data would represent an India-wide average and provide quantities more similar to Dong Yun's purchases of the intermediate product.

Dong Yun also asserts that the garlic bulb surrogate value is that of the fully processed garlic bulb and does not reflect Dong Yun's experience. According to Dong Yun, the garlic bulb surrogate value includes multiple layers of costs, profit, and transportation expenses that should be deducted. Dong Yun also contends that the price is constructed based on several layers of middlemen. Dong Yun concludes that import price data is therefore more appropriate because it

does not contain multiple layers of middlemen and more accurately represents Dong Yun's experience.

Petitioners assert that garlic prices published by APMC in its Market Bulletin are the most appropriate information available to value the raw garlic bulb input. However, Petitioners dispute that averaging the prices for both "A," with a diameter ranging from 40-55 millimeters ("mm"), and "Super-A," with a diameter ranging 40 mm and above, is the most accurate garlic bulb surrogate value. Petitioners contend that the Department should limit its garlic bulb surrogate value to the POR average prices of Super A garlic from the Himachal Pradesh. Petitioners maintain that the Department has found in recently completed administrative and new shipper reviews that indigenous Indian garlic is inferior to Chinese garlic in terms of the physical characteristics. According to Petitioners, the record supports that indigenous Indian garlic varieties are classified as Grade A garlic while Super A grade garlic designates India's new clonal garlic varieties that are more similar to Chinese garlic.

Petitioners rebut the Department's decision that the record does not provide a basis to distinguish between Grade A and Super A garlic. Petitioners first note that if there was overlap in the garlic-bulb diameter then there would have been no reason to create Grade Super A in 2006. Second, Petitioners proffer that their market researcher provided a full explanation for the differences between Grades A and Super A in response to the Department's supplemental questionnaires. Thus, Petitioners assert that the Department should analyze these differences and only use grade Super A garlic.

Petitioners provide a detailed history, starting with the 7<sup>th</sup> administrative review and ending with the 11<sup>th</sup> administrative review, as support for why Agrifound Parvati is one of two varieties of Indian-grown garlic most similar to Chinese subject merchandise and why other indigenous garlic varieties are inferior.<sup>13</sup> Petitioners specifically emphasize the Department's previous decisions regarding garlic seed and bulb surrogate value selection based on the fact that Chinese garlic is a high quality, high-yield garlic when compared with Indian grown garlic. Petitioners conclude that the Department's prior decisions consistently support that Indian garlic varieties are inferior to Chinese subject merchandise and that Agrifound Parvati is one of the two non-indigenous Indian clonal garlic varieties most similar to Chinese garlic. Petitioners assert that Grade A garlic sold at the Azadpur APMC was indigenous Indian garlic varieties and thus not comparable to Chinese garlic.

Petitioners point to four reasons why other Indian garlic varieties are not comparable to Chinese subject merchandise. First, Petitioners state that indigenous Indian garlic tends to be smaller, with bulbs between 10-40mm, which Chinese garlic typically has garlic bulbs ranging from 50-60mm. Second, Petitioners argue that indigenous Indian garlic contain 20-40 cloves per bulb while Chinese varieties generally contain 10-15 cloves per bulb. Third, indigenous Indian garlic is more pungent than Chinese garlic. Fourth, Petitioners allege that indigenous Indian varieties are grown in short-day growing regions which result in small garlic bulbs while bulbs grown in the north are in long-day growing areas which are more similar to the conditions in China that result in the formation of larger bulbs. Petitioners assert that Agrifound Parvati is more similar

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<sup>13</sup> See Petitioners' Case Brief at 6-10.

to Chinese garlic than other Indian garlic varieties because of its larger bulb size and corresponding number of cloves, its genetic origins, and that it is grown in the long-day growing area of India most similar to China. Petitioners conclude that given Agrifound Parvati's similarity with Chinese garlic in comparison with other types of Indian indigenous garlic varieties, it is the best surrogate value to use for this review.

Petitioners further argue that Super A garlic began being sold at the Azadpur Terminal Market Agriculture Produce Marketing Committee ("Azadpur APMC"), the largest APMC in India, in May 2006 and through the POR of the instant review. Petitioners assert that even though there is an overlap in the size of Grade A garlic bulbs, 40-55mm, and Super A garlic bulbs, over 40mm, that Super A garlic contains different characteristics than Grade A. Specifically, Petitioners state that bulb appearance, skin color, and clove numbers determine whether garlic is Grade A or Super A. Petitioners contend that their market researcher provided history regarding the adoption of Super A and why there is a bulb diameter overlap with Grade A garlic. Petitioners further note that grade Super A was created to distinguish new varieties of high yielding garlic bulb, which includes Agrifound Parvati. Petitioners argue that the Department should accept the statements made by their market researcher regarding the differences between Grade A and Super A garlic and only use Super A garlic, or provide an explanation for the Department's finding to the contrary.

Petitioners further argue that the POR prices of Agrifound Parvati from Himachal Pradesh sold at the Azadpur APMC are the best information on the record. Petitioners assert that the Solan Selection garlic variety, another type of high-yielding variety ("HYV") clonal variety grown in Himachal Pradesh, is a smaller bulb and is not being produced in large volumes in Himachal Pradesh. Petitioners therefore contend that the record supports that Agrifound Parvati constitutes the majority of Super A sales at the Azadpur APMC. Alternatively, Petitioners state that the surrogate value for the garlic bulb input should be based on all POR Super-A grade garlic prices from the Azadpur APMC.

Dong Yun rebuts that the Department should only use Super A grade Agrifound Parvati to value Chinese garlic. Dong Yun asserts that the dumping order covers multiple varieties of fresh garlic, not just Petitioners' definition of Chinese variety garlic. Dong Yun additionally argues that the record of this review and previous reviews does not support that Dong Yun only produced and sold garlic bulb comparable to Super A grade Agrifound Parvati. Dong Yun maintains that it sold different sizes of garlic during the POR and therefore its garlic is identifiable by numerous grades of garlic, not just Super A grade. Dong Yun further argues that hybrid cloned garlic varieties such as Agrifound Parvati are more expensive due to the research expenses associated with testing and cloning and this ultimately results in more expensive garlic prices. Dong Yun also rebuts Petitioners' assertion that using only high yield garlic results in an accurate comparison. Dong Yun specifically contends that lower yield Indian garlic is a result of a variety of factors, such as weather, soil type, water consumed, and farmer competence. Dong Yun concludes that Petitioners' consultant has only provided unsupported opinions regarding the garlic data that is unreliable and should not be used. In the alternative, Dong Yun again reiterates that the Department should use import data to value garlic bulb.

Shanghai LJ states that the Azadpur data are sold in quantities that are not representative of its experience. Shanghai LJ asserts that the Azadpur data are sold in 40 kg bags whereas if its producer Sunny were to buy garlic bulbs, it would buy them in bulk quantities, given its large production volume during the POR. According to Shanghai LJ, sales in bulk always involve a lower price than sales made in bagged quantities. Therefore, Shanghai LJ argues that the Department should value the garlic bulb using India's Monthly Statistics for the final results because India's Monthly Statistics are sold on the same quantity basis (in bulk) as Shanghai LJ.

Shanghai LJ rebuts that the garlic variety Agrifound Parvati is not an appropriate source for valuing the garlic bulb for the final results. Shanghai LJ argues that there is no evidence on the record of this proceeding demonstrating that Agrifound Parvati is most similar to the type of garlic grown by Shanghai LJ's producer. Shanghai LJ states that this assertion is not supported by any evidence beyond the unsupported and unverifiable statement of Petitioners' market researcher and vague generalizations from past proceedings of this Order.

In rebuttal, Shanghai LJ argues that because the PRC's growing experience significantly varies from India's experience it is not appropriate to base Shanghai LJ's production cost on Agrifound Parvati, which is a premium, rare sub-variety of garlic. Shanghai LJ states that Petitioners' argument that Agrifound Parvati is a type of garlic that is superior to the bulk of Indian production and that domestic production of this type cannot meet demand demonstrates that Indian import statistics are the appropriate source for valuing the garlic bulb. According to Shanghai LJ, the high price of Agrifound Parvati, as compared to other Indian types, guarantees that Indian imports of garlic will be of the higher-priced, higher demand garlic types, which Petitioners' allege are most comparable to Shanghai LJ's garlic input. Therefore, Shanghai LJ argues that the Department should value the garlic bulb using data from India's Monthly Statistics because the data is representative, broad-based, and publicly available.

Shanghai LJ argues that the Department should not value the garlic bulb using only "super-A" price data for the final results. Shanghai LJ asserts that "super-A" is a new and experimental type of garlic bulb that was produced for the first time in the last few months of the POR. Accordingly, Shanghai LJ argues that the "super-A" price data cannot be a legitimate and definitely not the sole source for valuing Shanghai LJ's input because there is no history, public documentation, and explanation of this new product.

Petitioners disagree with Respondents' arguments that the Azadpur APMC data represent the finished product, noting that there is no record evidence to support this claim. Petitioners point out that Respondents do not similarly claim that the Indian import data they advocate using also represent resale prices of the finished product, and instead suggest that the Department use such data only because they are lower than the Azadpur APMC prices. Petitioners note that the higher prices in the Azadpur APMC data are due to their being size and grade specific, whereas the commingled import data are not.

Petitioners argue that the size of the sack in which raw garlic is sold is irrelevant; simply because prices are quoted on the basis of a 40 kg sack provides no information on transaction quantities. For example, Petitioners note that steel prices are often quoted per hundredweight even for transactions involving many tons. Even if the Department were to assume that transactions

occurred in 40 kg lots, Petitioners argue that there is no precedent for introducing a “comparable quantity” component of surrogate value selection. Petitioners further contend that the volume of Respondents' sales of garlic have no bearing on surrogate value selection, and note that the standard packaging sizes for Dong Yun were in fact in sizes as small as 20 pounds.

#### B. Broad Market Average

Dong Yun contends that the garlic surrogate value used does not encompass all government-regulated markets throughout India and therefore does not represent a broad market average. Dong Yun asserts that the Department ignored country-wide import data covering the POR that meets the definition of “best available information.”

Dong Yun asserts that the sale of garlic in India is a monopoly and therefore must be sold in government-controlled markets. Dong Yun contends that Petitioners' consultant stated that garlic is a “notified” commodity and therefore must be sold in a government-controlled market. Dong Yun further contends that Petitioners' consultant stated that the APMC price data is not regulated to ensure accuracy, garlic bulb sizes are reported in a maximum/minimum/modal size format versus actual sizes, and there is no standard among APMCs. Dong Yun therefore concludes that the domestic Indian garlic bulb prices obtained from government-owned and controlled markets do not constitute a broad market average.

Shanghai LJ argues that the Department should not use the Azadpur data for valuing the garlic bulb for the final results because the Azadpur data are not market-based. Shanghai LJ states that the Azadpur data is from a government-controlled market entity with strict price controls and has monopolistic power over prices. Shanghai LJ notes that the Azadpur data is significantly higher than the market-based prices for garlic reported in India's Monthly Statistics. Therefore, Shanghai LJ argues that the Azadpur data is not an appropriate source for valuing the garlic bulb in the final results.

Shanghai LJ argues that the Azadpur data should not be used to value the garlic bulb for the final results because the Azadpur data is at an inappropriate level of trade. Shanghai LJ asserts that the Azadpur data is at a more advanced level of trade (*i.e.*, a sales chain that involves the grower, trader, commission agent, and finally the wholesaler) with a significant amount of downstream expense included in the cost. According to Shanghai LJ, the multiple levels of trade included in the Azadpur data result in significant increase in the price and thus, are not representative of the price of the garlic bulb paid by Shanghai LJ.

Petitioners contend that the Azadpur APMC data, absent evidence to the contrary, are available to all buyers in India, that the Azadpur APMC is a national distribution market in India, and that the data thus represent a broad market average. Petitioners contest Respondents' arguments that the Azadpur APMC prices are somehow distorted due to subsidization, “monopoly” power, or that they represent an inappropriate level of trade, stating that there is no support for these assertions.

### C. Public Availability

Dong Yun argues that the grade-specific garlic bulb surrogate values provided by Petitioners are not public information because the APMC website does not contain information on the grade or size of the garlic. Dong Yun concludes that because grade-specific garlic is not available on the APMC website it is therefore not public information. Dong Yun asserts that it is unable to ascertain the veracity of the information provided by Petitioners' consultant because the sources of the information are treated as business confidential. Dong Yun argues that garlic bulb price data by size contained in the market information bulletins are not available on the website and therefore not published or publicly available. Dong Yun further asserts that because only sellers and licensed buyers of the market are aware of the existence of the Bulletin that it cannot be considered publicly available when the public is not aware of its existence. Dong Yun concludes that Petitioners would not have needed to hire a consultant to obtain the data if it were truly publicly available.

Shanghai LJ argues that for the final results the Department should value the garlic bulb using Indian import statistics. In other antidumping cases, the Department has relied on Indian import statistics as the source valuing PRC factors of production ("FOPs"). Pursuant to 19 CFR 351.408(c)(1), Shanghai LJ argues that there is a strong preference for using publicly available information for valuing FOPs, which are readily satisfied by the Indian Ministry of Commerce and Industry's "Monthly Statistics of the Foreign Trade of India" ("Monthly Statistics"). Additionally, Shanghai LJ states that the Department in this proceeding stated that it would rely on India's Monthly Statistics for valuing surrogate values because the data is publicly available. Shanghai LJ argues that the Department's decision in the Preliminary Results to value the garlic bulb using Azadpur data is inappropriate because the data is not transparent, and broad-based. Accordingly, Shanghai LJ states that the Department should select all surrogate values, including for the garlic bulb, on the same basis using data from India's Monthly Statistics for the final results.

Petitioners state that, despite Respondent's arguments to the contrary, the Azadpur APMC data is publicly available. Petitioners note that there is no requirement for surrogate value data to be available via the internet, and that the Azadpur APMC data, via the daily bulletins, are available to anyone who retrieves them, that there are no obstacles to obtaining these data, and that Respondents have failed to submit anything questioning the accuracy and credibility of the data. Petitioners compare the instant case to the Department's position with respect to the financial statements of privately held Indian companies, where it stated that "financial statements of private companies filed with the Indian Registrar of Companies are in the public realm." See Notice of Final Determination of Sales at Less than Fair Value, and Affirmative Critical Circumstances, in Part: Certain Lined Paper Products from the People's Republic of China, 71 FR 53079 (September 8, 2006) ("CLPP"), and accompanying Issues and Decision Memorandum at Comment 1.

### D. Contemporaneity

Dong Yun asserts that the Department went against its long-standing policy to use POR-specific data in the Preliminary Results and averaged POR and post-POR garlic bulb surrogate values.

Dong Yun contends that respondents cannot be expected to sell at prices based on surrogate values that have yet to be established.

Shanghai LJ argues that if the Azadpur data is used for valuing the garlic bulb in the final results, the Department should calculate the surrogate value using Azadpur data that is only from the POR. Shanghai LJ notes that the values in the Azadpur data used in the Preliminary Results increased throughout the reporting period, particularly for the months after the POR. According to Shanghai LJ, since the values in the Azadpur data after the POR increased significantly, it is inappropriate to include these high post-POR prices in the surrogate value.

Petitioners state that the use of post-POR data from the Azadpur APMC is reasonable, in that the Department, consistent with its practice, deflated the post-POR data points.

#### E. Tax and Duty Exclusivity

Petitioners argue that the Department incorrectly adjusted the garlic bulb surrogate value by deducting a six percent auction fee and a one percent market fee. Petitioners contend that there is no evidence on the record that supports that the APMC daily prices include such fees. Petitioners suggest that the Department meant to refer to Petitioner's October 16, 2006, market research declaration that indicated that market fees "are payable to the APMC as a percentage of the transaction price." According to Petitioners, even if such fees are included in the quoted prices, that they should not be deducted as fees but instead are part of the purchase price. Petitioners state that should the Department make these adjustments that they should be added to the APMC daily transaction prices.

Dong Yun rebuts Petitioners' argument that there are not fees charged at the APMC that should be deducted from the garlic prices. Dong Yun contends that Petitioners' consultant acknowledged that there are transaction fees associated with selling garlic at this market. Dong Yun also requests that the Department independently determine the level of fees charged at the market.

Shanghai LJ asserts that if the Azadpur data is used for valuing the garlic bulb in the final results, the surrogate value must be calculated net of taxes. Shanghai LJ states that the Azadpur data includes numerous taxes, including value-added taxes, Indian education taxes, and Octroi taxes. According to Shanghai LJ, these taxes do not appear to have been excluded from the Azadpur data and thus the Department must reduce the Azadpur data by the amount of each of these taxes for the final results. Additionally, Shanghai LJ argues that there are additional fees and charges included in the Azadpur data that should be removed so that the Azadpur data is on a net of taxes basis.

In rebuttal, Petitioners contend that no reduction to Azadpur APMC prices is needed to account for supposed double counting of costs or expenses. Petitioners note that in the 10<sup>th</sup> administrative review of this order, the Department determined that its use of the Agmarknet data (of which the Azadpur APMC is part) represented the use of wholesale prices of garlic in the whole bulb form, that there is no repackaging done at either the wholesale or retail level, and that the intermediate product sold in Indian markets is transported in similar sacks as those used

in China. See Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Reviews, 71 FR 26329 (May 4, 2006) (“10<sup>th</sup> Garlic Final”), and accompanying Issues and Decision Memorandum at Comment 2 (pages 52 and 53). Petitioners state that Respondents are incorrect in alleging any double counting of financial expenses, in that so long as the Department uses the financial statement of a non-integrated company that purchases an intermediate product for further processing, there would be no double counting of overhead, SG&A, or profit.

### **Department’s Position:**

Consistent with our finding in previous reviews, we find the Azadpur Agricultural Produce Marketing Committee’s APMC Market Information Bulletin to be the best available information to value the garlic bulb input (the intermediate product) because it is specific to the product in question, represents a broad market average, is publicly available, and is tax and duty exclusive. Moreover, we note that the Indian import data for garlic are not on the record of this review.

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 11<sup>th</sup> Garlic Final at Comment 2; 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. 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 at Comment 1. There 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 at Comment.

#### **A. Product Specificity**

In the Preliminary Results, we used prices for Grade A and 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 only information on the record of these reviews to value the input in question. The Department has concluded for the last several reviews that the vast majority of the evidence indicates that size of the garlic bulbs is given significant value in the marketplace. See 11<sup>th</sup> Garlic Final at Comment 2.A. 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. While Respondents have argued that the Department should value the garlic bulb using data from India's Monthly Statistics, this information is not on the record of this proceeding and thus the Department has not considered it for the final results.

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. We note that for the Preliminary Results, we explained that garlic ranging from 40-55 mm was Grade A and Grade Super-A garlic ranged from 40 mm and up, which was obtained from the July 2007 Foreign Market Research Report. See Preliminary Results, 72 FR at 69660 and Petitioners' August 2, 2007, Surrogate Value Submission, at Exhibit 5 (July 11, 2007, supplemental questionnaire response at 4-5). Accordingly, because the Respondents reported the garlic bulb input in size ranges of greater than 40 mm, we used an average of Grade A and Grade Super-A garlic prices for calculating the surrogate value for the garlic bulb. However, since the Preliminary Results, we have reviewed the record of this proceeding and find that there are statements in the July 2007 Foreign Market Research Report that provide clarification on the size ranges of Grade A and Grade Super-A. Specifically, we note that the July 2007 Foreign Market Research Report states that: "bulb sizes above 55 mm would invariably be one of the newer clonal varieties classified as 'Super A.'" See Petitioners' August 2, 2007, Surrogate Value Submission, at Exhibit 5 (page 5). We have concluded that a more accurate analysis would be for the Department to use only Grade Super-A values for reported bulb sizes in ranges of 55 mm and above because bulb sizes that are 55 mm and above are typically classified as Grade Super-A. However, we have also concluded that it is appropriate to average Grade A and Super-A values for reported bulb sizes in ranges from 40 to 55 mm because both A and Super-A reflect bulb sizes greater than 40 mm. See Memorandum to the File through Alex Villanueva, Program Manager, from Julia Hancock, Senior Analyst: 12<sup>th</sup> Administrative Review of Fresh Garlic from the People's Republic of China: Surrogate Values for the Final Results, (June 9, 2008). For these final results, however, using Respondents' size data on the record<sup>14</sup> (and the July 2007 Foreign Market Research Report's clarification on the size ranges of Grade A and Super-A), the Department calculated a surrogate value based on the most appropriate Bulletin data.

Additionally, with respect to Petitioners' argument that the Grade Super-A Agrifound Parvati bulb from the Indian state of Himachal Pradesh is most similar to the PRC garlic bulbs used by the Respondents, Petitioners have not provided conclusive evidence that this bulb is the most comparable to the type used by the PRC Respondents. Specifically, although Petitioners have submitted statements from prior reviews and from their market researcher regarding the Agrifound Parvati bulb, they have not provided conclusive evidence that only the Agrifound Parvati bulb is most similar to the garlic bulb input used by Respondents. While the Department agrees that size is not the only characteristic that should be considered in selecting the appropriate surrogate value, there is no conclusive record evidence that identifies that only the Agrifound Parvati bulb has the same physical characteristics as Respondents' garlic bulb input. Therefore, because the record does not contain specific information, (*i.e.*, specific number of cloves, skin color, etc.), that shows that the Respondents' garlic bulb input's physical

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<sup>14</sup> For the garlic sizes sold by Respondents during the POR, see individual analysis memoranda.

characteristics only shares similarities to the Agrifound Parvati bulb, the Department is not limiting our surrogate value selection to include only those data points from Himachal Pradesh.

Moreover, with respect to Respondents' argument that they sell garlic in container quantities and bulk quantities, while the Azadpur APMC prices are for 40 kg sacks, we do not find this argument persuasive. We first note that the garlic sold at Azadpur APMC, and the garlic sold by Respondents are both on a per-kg basis. Second, to the extent that there may be a difference in pricing, Respondents have not provided any record evidence supporting their assumption that a container load or bulk load of fully processed garlic is more representative than a sack (40kg) of unprocessed garlic.<sup>15</sup> Moreover, we note that several tons of garlic are sold at Azadpur APMC each day, which are packed in 40 kg sacks. There is no record evidence concerning the size of individual garlic sales at Azadpur APMC, *i.e.*, whether the garlic is sold on a sack-by-sack basis, on an individual farmer basis, or in lots which could weigh several tons.

In addition, as noted above, it is the Department's practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, to select, to the extent practicable, surrogate values which are representative of a broad market average, publicly available, product-specific, contemporaneous with the POR and tax-and duty-exclusive. Thus, the Department generally does not consider how a particular respondent may sell, package, or ship subject merchandise when valuing FOPs used to produce subject merchandise.

#### B. Broad Market Average

We find that data from the Bulletin represent a broad market average. In past cases, we have found official government publications to be reliable and credible sources of information. See 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 is the largest fruit and vegetable market in Asia and has become a "National Distribution Centre" for important Indian agricultural products, such as garlic.<sup>16</sup> 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 India's agricultural "National Distribution Centre" and its claim to be the largest agricultural market in India to be reliable and credible. Furthermore, as discussed above, because India's Monthly Statistics for garlic are not on the record of this proceeding, the Department is not considering this data source for valuing the garlic bulb input and thus has not addressed Shanghai LJ's argument that this data is a broad market average. We also note that there are no alternative data on the record.

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<sup>15</sup> We note that Dong Yun's shipments of garlic are packed in boxes, which weigh in the tens of kg range, and are placed into a container. Thus, Dong Yun's containers contain many cartons of garlic, just as arrivals of garlic at Azadpur APMC may consist of many 40 kg sacks.

<sup>16</sup> The Azadpur APMC's website is [www.apmcazadpurdelhi.com](http://www.apmcazadpurdelhi.com).

When calculating surrogate values, it is the Department's practice to use country-wide data instead of regional data when the former is available, and the Court of International Trade ("CIT") has affirmed this practice. See Wuhan Bee Healthy Co., Ltd. V. United States, Slip Op. 05-142 (CIT 2005) at 5-6. 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 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. In addition, we note that the data set used by the Department to calculate the garlic bulb surrogate value for Grade Super-A contains over 200 points of data, which also represents millions of kilograms of garlic also sold from seven states. Finally, the Department finds that Respondents have not provided any evidence demonstrating that the Azadpur APMC data is distorted by monopolistic control of government entities. The simple fact that garlic is sold at a market set up by the government does not indicate that the government influences the prices in such a market. Thus, we find that the Bulletin is a reliable and credible representation of a broad market average.

Moreover, with respect to Shanghai LJ's argument that the Azadpur APMC data is at an advanced level of trade with a significant amount of downstream expense included in the cost, the Department disagrees. According to the Azadpur APMC's website, the market's purpose is to safeguard the interests of wholesalers (sellers) and commission agents (buyers) by "eliminating various malpractices like under-weightment, short payment, delayed payments, unauthorized deductions, and the indulgence of too many intermediaries." In other words, because the Azadpur APMC's website indicates that it was set up precisely to counteract the influence of intermediaries and provide a more direct channel from producer to buyer, we find that Shanghai LJ's argument that the Azadpur APMC price is at an inappropriate level of trade is incorrect. Therefore, we find that the Azadpur APMC data is at an appropriate level of trade because the sales chain does not include numerous actors or "intermediaries" that would result in a significant increase in the price.

### C. Public Availability

Based on the record of this proceeding, we find the Bulletin to be publicly available. According to the July 2007 Market Research Report, the Azadpur APMC data is published daily, posted in the APMC's facilities for public viewing, is electronically archived and is available upon request. We have in electronic form, Bulletins published for Grade A and Super-A, for six months of the POR.<sup>17</sup> While we note that the Bulletin is not readily available on the internet, it is readily available to its intended public audience, wholesalers and buyers at Azadpur APMC in India. Moreover, the Department has reviewed the Bulletin price data and is satisfied that each

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<sup>17</sup> We have Bulletins for every trading day and each Bulletin contains a header page and signature page.

day where data could have been available at the APMC, that data was submitted. Therefore, we do not find that public availability is at issue here with respect to the inaccessibility of a complete set of data.

Additionally, we also disagree with Dong Yun's argument that the Azadpur APMC data is not publicly available because the sources of information, such as the July 2007 Market Research Report, are treated as privileged. We note that the only information double-bracketed in the July 2007 Market Research Report concerns the personal identity of the market researcher who compiled the report, and the name and designation of the sources. See Petitioners' August 2, 2007, submission at Exhibit 5. However, we note that the report does identify the organization that each of the sources represents, and all other information contained in the report is public. And, as noted above, the primary surrogate value source, the Azadpur APMC data is available upon request from the APMC. In past cases, the Department has relied on surrogate value information gathered by market researchers. Moreover, the amount of double bracketing contained in the report is consistent with past segments of this order, and our practice in general, when independent market researchers request anonymous treatment and provide an explanation for their request. 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) ("8<sup>th</sup> Garlic Final"), and accompanying Issues and Decision Memorandum at Comment 1.

Furthermore, as discussed above, because India's Monthly Statistics for garlic are not on the record of this proceeding, the Department is not considering this data source for valuing the garlic bulb input and thus has not addressed Shanghai LJ's argument that this data is publicly available.

#### D. Contemporaneity

We agree with Respondents. For the final results, we find that the most appropriate PAI for valuing the garlic bulb input is to calculate the surrogate value using Grade A and Super-A garlic values from May 2006 through October 2006. In the Preliminary Results, we used Grade A and Super-A garlic values for May 2006-January 2007, which contained data points that post-date the POR and were not contemporaneous. Although 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, there is no hierarchy in selecting the best information available to value a FOP. 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. 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 11<sup>th</sup> Garlic Final at Comment 2. However, although the data points for Grade A and Super-A that were used in the Preliminary Results included both data from during and after the POR, we find that it would be most appropriate for the final results to use only the data points from months during the POR. In prior administrative and new shipper reviews, we included post-POR data largely because the Azadpur APMC data contained few data points within the POR, especially for Grade Super-A. However, we find that the record of this review contains six months of data points for Grade A and Super-A garlic values that are specific to the input and contemporaneous with the POR.

## E. Tax and Duty Exclusive

We find the Azadpur APMC prices to be tax and duty exclusive. In the 11<sup>th</sup> Garlic Final, we found 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 11<sup>th</sup> 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 Azadpur APMC is to provide transparent agricultural pricing data to the public, *i.e.*, buyers and sellers. Therefore, we find that if the Agmarknet data is tax and duty exclusive, the underlying source data, the Azadpur APMC, must also be tax and duty exclusive. Furthermore, we note that there is no record evidence that the Azadpur APMC levies duties or taxes on the products sold at the APMC.

Additionally, we disagree with Petitioners that there is no record evidence that the Azadpur APMC data does not include a six percent commission and one percent market fee. Specifically, there is record evidence showing that the Azadpur APMC’s prices include these fees. See Petitioners’ August 2, 2007, Submission, at Exhibit 3 (Background Information of APMC, Azadpur, which identifies rate of commission as 6 percent and rate of market fee as 1 percent). Accordingly, for the find results, we have continued to deduct seven percent from the garlic bulb surrogate value to account for the market fees imposed by the Azadpur APMC.

We disagree with Respondents that there are additional fees and expenses that are included within the Azadpur APMC data. The Azadpur APMC Bulletins indicate that they cover only wholesale prices of agricultural products. While it is possible that transportation and handling expenses are incurred by Indian farmers at Azadpur APMC, there is no information on the record regarding transportation, handling expenses, and any other additional fees. Accordingly, because there is no record evidence demonstrating that the Azadpur APMC data includes additional fees and expenses, we have not made a deduction to the Azadpur APMC data absent such information.

### **Comment 3: Surrogate Financial Ratios**

Petitioners argue that in the Preliminary Results, the Department was incorrect to use the 2004-2005 financial statement of Limtex Tea Limited (“Limtex”), an Indian tea company, for calculating the financial ratios. Petitioners assert that Limtex’s financial statement shows that it is an integrated tea producer because: (1) it has substantial plantation holdings where it grows the raw material input; (2) the “Plantation Chopra Project” listed in its Fixed Assets Schedule recorded significant assets for land, plantation, tractors, etc.; and (3) it subscribes to the Tea Research Association and obtained loans from India’s Tea Board. See “12<sup>th</sup> AR of Fresh Garlic from the PRC: Surrogate Value Source Documents,” dated November 30, 2007, at Attachment 6. Additionally, Petitioners argue that the Department has recognized in prior proceedings, such as Isocyanurates from the PRC, the need to consider the level of integration in evaluating whether it is appropriate to use a potential surrogate’s financial data. 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) (“Isocyanurates from the PRC”), and accompanying Issues and Decision Memorandum at Comment 3. Accordingly, Petitioners contend that since Limtex is an integrated producer Limtex's financial experience is not comparable to the financial experience of the non-integrated Respondents of this proceeding.

Petitioners argue that the Department should use the 2006-2007 financial statement of Godfrey Philips (“Godfrey”), an Indian manufacturer of tobacco products, for calculating the financial ratios for the final results. Petitioners state that Godfrey should be used as a surrogate producer because it produces merchandise, tobacco, which is comparable to garlic. According to Petitioners, when evaluating whether a company produces comparable merchandise, the Department considers the company's production process taking into account the complexity of the processes and the types of equipment used. See Glycine from the People's Republic of China: Final Results of New Shipper Administrative Review, 66 FR 8383 (January 31, 2001) and accompanying Issues and Decision Memorandum at Comment 7. Petitioners argue that the production process of tobacco and garlic are similar because both are simple processes. Therefore, Petitioners argue that Godfrey's production process should be considered similar in complexity and level of integration to the processing of garlic.

Petitioners argue that the Department's finding in the Preliminary Results that Godfrey's financial experience was not comparable to the Respondents' financial experience is inaccurate. Petitioners state that Godfrey's production activity is more similar than Limtex's production activity to garlic production because both garlic and tobacco production involve processes using intermediate inputs. Additionally, Petitioners argue that there is no record evidence that supports the Department's finding in the Preliminary Results that Limtex's production experience is more comparable to a garlic company than Godfrey's production experience.

Petitioners state that the Department should use the 2006-2007 financial statement for Godfrey for the final results because it is contemporaneous with the POR. Petitioners state that the Department should not use the 2004-2005 financial statement for Limtex because the reporting period for Limtex ends seven months before the beginning of the POR. In contrast, Petitioners argue that the 2006-2007 financial statement for Godfrey covers seven months of the POR and thus, is the most contemporaneous.

In its case brief, Dong Yun argues that the Department should continue to use the financial statement of Limtex, an Indian tea producer, to determine the surrogate financial ratios, and not the financial statement of Godfrey Phillips. Dong Yun states that it has relied on such financial statements in attempting to comply with the antidumping duty statute. Dong Yun states that Petitioners have not demonstrated that the cigarette industry in India has any similarities to the garlic industry in China, much less that it is more comparable than the tea industry.

In its rebuttal brief, Dong Yun reaffirms that the Department should continue using the financial statements of Limtex, a fully integrated tea company, instead of a value-added cigarette company. Dong Yung contends that Limtex, unlike the cigarette company, is fully integrated like Dong Yun, and produces an agricultural commodity with simple labor-based processes. Dong Yun further notes that cigarettes require more complex processing, the addition of additives, and are branded as a way to distinguish between qualities, none of which are similar to

garlic processing. Lastly, Dong Yun states that garlic is an agricultural commodity, with commodity pricing, and concominantly low profit margins.

**Department's Position:**

In valuing the FOPs, section 773(c)(1) of the Act instructs the Department to use “the best available information” from the appropriate market economy country. The Department’s criteria for selecting SV information are normally based on the use of PAI and the Department considers several factors when choosing the most appropriate PAI, including the quality, specificity, and contemporaneity of the data. See, e.g., CLPP at Comment 3.

We continue to determine that the 2004-2005 Limtex financial statement is the best available information on the record to value overhead, SG&A, and profit. The Department notes that absent the financial statement of an actual Indian garlic producer, it is left to choose from two companies, Limtex, which produces and sells tea, or Godfrey, which primarily produces and sells value-added tobacco products such as cigarettes and cigars. Consistent with the Preliminary Results, 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 11<sup>th</sup> 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 11<sup>th</sup> AR Final at Comment 3; see also the memorandum to the file “12th Administrative Review of Fresh Garlic from the People’s Republic of China: Surrogate Value and Intermediate Methodology Source Documents,” dated November 30, 2007, at Attachment 6. We note that this observation was not rebutted.

The Department notes that there is limited information on the record regarding Limtex’s involvement in the “Plantation-Chopra Project.” The Department finds that the fixed assets listed under the “Plantation-Chopra Project” do not provide conclusive evidence that Limtex grows the majority of its tea. Additionally, it is unclear how Limtex’s participation in the Tea Research Association and the fact that it mortgages its land holdings to secure loans supports a claim that Limtex grows the majority of its tea. Therefore, Petitioners’ assertions that Limtex’s involvement in the “Plantation-Chopra Project” indicate that it is an integrated producer are undermined by the information contained in Schedules 16 and 21.

The Department also disagrees with Dong Yun’s argument that we should use Limtex to value the financial ratios because it is an integrated producer, as Dong Yun is also integrated. The Department is using an intermediate methodology for both mandatory respondents in the instant

review and therefore, the financial experience of a non-integrated company is more representative of the financial experiences of the respondents.

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’ products. See Isocyanurates from the PRC at Comment 2. As Dong Yun noted, the Department has previously determined that tea production is similar to that of garlic.<sup>18</sup> Garlic processing is a simpler undertaking than the processing of value-added tobacco products such as cigarettes and cigars, which comprise the vast majority of Godfrey’s production and sales. While Petitioners contend that there is reasonable comparability among the production processes of tobacco, tea and garlic, the Department’s calculated financial ratios for Godfrey demonstrate otherwise. For instance, Godfrey’s overhead ratio is nearly 10 times greater, and its SG&A ratio is over nine times greater, than the corresponding ratios for Lintex. See Final Surrogate Value Memo at Exhibit 3.

While we acknowledge that the financial statement of Lintex is not as contemporaneous as Godfrey’s, as explained above, we have determined that its production and financial experience is more reflective of a garlic company than that of Godfrey. Moreover, Lintex’s financial statement, which covers the period April 1, 2004, through March 31, 2005, is not far removed from the POR. The CIT has held that contemporaneity is not a compelling factor where the alternative data is only a year-and-a-half distant from the period of review. See Hebei Metals & Minerals Import & Export Corporation and Hebei Wuxin Metals & Minerals Trading Co., Ltd. v. United States, 366 F.Supp.2d 1264,1275 (CIT March 10, 2005) (“Hebei”).

Therefore, we find no substantial evidence on the record to support the argument that using the financial statement of Godfrey instead of the financial statement of Lintex would result in more accurate financial ratios. In fact, Godfrey’s extremely high overhead and SG&A ratios indicate that its production, sales, and administrative functions are much more complex than those of a garlic or tea company, and would not result in an accurate antidumping margin calculation. In calculating the surrogate financial ratios, we will thus continue to use the financial statements of Lintex for these final results as it represents the more appropriate surrogate financial company.

#### **Comment 4: Labor Surrogate Value**

Dong Yun asserts that the Department’s wage rate regression analysis methodology does not use the prices of market economy countries at a level of economic development comparable to China and that are significant producers of garlic, and thus is contrary to sections 773(c)(4)(A) and 773(c)(4)(B) of the Act. Dong Yun further contends that it appears that the Department arbitrarily included and excluded countries in its basket of countries without assessing their

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<sup>18</sup> See 8<sup>th</sup> Garlic Final at Comment 7 (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 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 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).

comparability to China based on gross national investment (“GNI”). Dong Yun requests that the Department place on the record a list of countries that the Department had information for but excluded from its calculations. Dong Yun contends that the Department uses countries in its calculation that are not indicative of the labor rates in China and thus the data do not represent the best available information. Dong Yun notes that the labor rate for India, the primary surrogate country, is only \$0.13, but the Department calculated a wage rate of \$0.83 for the PRC. Dong Yun also asserts that the inclusion of data from economically advanced countries is arbitrary and punitive. See Allied-Signal Aerospace Co. v. United States, 996 F.2d 1185, 1191 (Fed. Cir. 1993); see also Allied Tube & Conduit Corp. v. United States, 24 CIT 1357, 1370 (2000). Dong Yun argues that there is no justification to have an inconsistent policy of choosing data from countries at a comparable economic level to value all other FOPs except labor. Dong Yun concludes that the Department’s regression-based methodology, which includes many countries regardless of their level of development, does not promote a more accurate margin calculation and is in fact contrary to the Department’s statutory mandate.

Shanghai LJ contends that the Department must correct its surrogate labor rate to exclude wage data from economically advanced countries. Shanghai LJ argues that the Department must base the labor rate on data from countries that are economically comparable to China and that are significant producers of comparable merchandise.

Petitioners note that Respondents’ arguments regarding the inappropriateness of the Department’s wage rate calculation were raised, and rejected, in the 11<sup>th</sup> Administrative Review and concurrent new shipper reviews in this proceeding. Petitioners cite to the Department’s analysis in those segments and argue that it remains equally applicable in the instant review.

### **Department’s Position:**

We agree with Petitioners. For the final results, we will continue to use regression-based wage data, but will use US \$1.04 as the revised wage for the PRC in these final results, which continues to be based on the reported experience of several countries, but applies the more recent 2007 calculations, which are based on 2005 wage rate data.<sup>19</sup> We find that a larger number of countries’ data maximizes the accuracy of the regression results, minimizes the effects of the potential year-to-year variability among the various countries, and provides predictability and fairness. The economic comparability is established in the regression calculation through the GNI of the PRC and ensures that the result represents a wage rate for a country economically comparable to the PRC.

The Department’s regression methodology is superior to a single country’s wage rate because the regression methodology ameliorates any country-specific distortion that would cause variation in the data, ties the estimated wage rate directly to each NME’s GNI, and provides predictable results that are as accurate as possible. The Department finds that the regression-based methodology does not distort or systematically overestimate wage rates in general; rather, the regression line serves to smooth out the differences in the reported wage rates. By ensuring the

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<sup>19</sup> See <http://ia.ita.doc.gov/wages/05wages/05wages-051608.html>; see also Corrected 2007 Calculation of Expected Non-Market Economy Wages, 73 FR 27795 (May 14, 2008).

data in the regression includes all earnings data that best reflect the dynamics of contemporaneous labor markets and represents both men and women in all reporting industries, the Department is able to minimize many potential distortions. Therefore, using a large basket of data is less susceptible to both the country-by-country, as well as the year-on-year, variability in data and enables the Department to arrive at the most accurate, predictable, and fair surrogate value for labor.<sup>20</sup> Because reliable wage rate data is available and there exists a consistent relationship between wage rates and GNI over time, the Department is able to avoid periodic variability through the use of a regression-based methodology for estimating wage rates. The Department calculates, in essence, an average wage rate of all market economies, indexed to each NME's level of economic development via its GNI. Using the Department's regression methodology, the value for labor in a particular country remains consistent despite the possible selection of different surrogate countries. This enhances the fairness and predictability of the Department's calculations.

In Antidumping Methodologies: Market Economy Inputs, Expected Non- Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716 (October 19, 2006), the Department addressed Respondents' primary argument and found that restricting the basket of countries to include only countries that are economically comparable to each NME country would undermine the consistency and predictability of the Department's regression analysis. The smaller the number of countries included in the basket, the more likely the data from the surrogate would individually affect the wage rate applied. A basket of "economically comparable" countries could be extremely small. For example, there are only four countries with GNI less than US\$1,000 in the Department's 2005 expected NME wage rate calculation and many NME countries' GNI are around this range. A regression based on an extremely small basket of countries would therefore be highly dependent on each and every data point. This would in many ways defeat the reason the Department uses International Labor Organization ("ILO") data to determine wage rates. It is also worth noting this relative basket size would not be such a critical factor if there were a perfect correlation between GNI and wage rates. If this were the case, data from only two countries would be sufficient to calculate a precise regression line. However, while there is a strong worldwide relationship between wage rates and GNI, there is nevertheless variability in the data.<sup>21</sup> This inevitable variability in the underlying ILO data is especially true in the case of countries with a lower GNI where wage rates can be so low

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<sup>20</sup> The Department cannot purport to produce perfect wage rates with its regression methodology, as no estimate ever can claim such precision. However, there is no inherent distortion in the model that would lead to systematic overestimation or underestimation of wages. The Department acknowledges that its regression line provides only an estimate of what an NME's hourly wage rate would be within a mathematically derived margin of error based on the wage rates and GNI data from market economies. As with any estimate based on a pool of data, some data will fall above the estimate and some data will fall below the estimate.

<sup>21</sup> For example, in the data relied upon for the Department's 2005 calculation, observed wage rates did not increase in lockstep with increases in GNI in the four countries with GNI less than US\$1,000: Nicaragua, with a GNI of US\$950, had reported a wage rate of US\$0.884 per hour, Mongolia, with a GNI of US\$720, had reported a wage rate of US\$0.434 per hour, India, with a GNI of \$730, had reported a wage rate of US\$0.213 per hour, and Madagascar, with a GNI of US\$290, had a reported wage rate of US\$0.200. See <http://ia.ita.doc.gov/wages/05wages/05wages-051608.html>.

that even a difference of a few cents can appear to be enormous if represented in percentage terms.

While Dong Yun points specifically to India as an example of wages “overstated” by the regression calculation, there are a significant number of predicted wage rates that also are above the regression line, i.e., economies for which the model would “understate” wage rates; in all, 23 of the 61 countries included in the model lie above the regression line. India’s wage rate is the second lowest reported wage rate in the Department’s data set, despite not being the second lowest GNI per capita. Still, the Department treats India’s wage rate not as an anomaly, but as another piece of data that informs the regression line. However, given that India’s wage rate is so much lower than that of other countries in relation to its GNI, any calculation that relies on data from other countries would overstate India’s actual reported wage. Because India’s wage rate is so low relative to its GNI, the regression, unsurprisingly, also “overstates” India’s wage rate, and can lead to an appearance of distortion, even where there is none, such that the calculated wage rate falls within an acceptable margin of error.

Lastly, we note that the Department provided the full explanation for the countries it included and excluded in its wage rate calculation. See Expected Non-Market Economy Wages: Request for Comments on 2007 Calculation, 73 FR 19812 (April 11, 2008); see also 2007 Calculation of Expected Non-Market Economy Wages, 73 FR 26363 (May 8, 2008).

#### **Comment 5: By-product Offset**

Dong Yun argues that there is no record evidence to support the Department's conclusion that the prices for garlic bulbs in India already account for the sale of by-products. Dong Yun posits that the opposite conclusion should be reached, since information on the record indicates that all vegetables are sold in government-controlled markets (such as the Azadpur APMC), and there is no mention of sales of the garlic sprout by-product. Dong Yun also notes that none of the surrogate value information submitted by Petitioners mentions the sale of garlic sprouts in India, and that it appears that Indian garlic producers do not sell garlic sprouts. Dong Yun therefore concludes that a by-product adjustment should be made.

Shanghai LJ argues that if the Department continues to use data from the Azadpur APMC to value the garlic bulb input, it must still grant an offset for the sale and internal use of the garlic seed by-product since there is no evidence that the Azadpur APMC bulb price accounts for any by-product sales.

Petitioners contend that the Department correctly refused to offset the intermediate garlic bulb price to account for by-product sales. Petitioners note that the Department denied the same request in the 11<sup>th</sup> Administrative Review. Petitioners state that because the by-product offset for garlic sprouts is incurred at the growing stage, and the Department does not use the growing-related FOPs, the surrogate value for the garlic bulb represents the total value from the growing stage, including any offsets. Petitioners conclude that granting such an offset in the instant case would result in double-counting the by-product offset.

## **Department's Position:**

We agree with Petitioners. As articulated in the 10<sup>th</sup> Garlic Final at Comment 5 and the 11<sup>th</sup> Garlic Final at Comment 9, we are not granting a by-product offset in our calculations of respondents' NV since 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 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. For instance, whether a grower sold sprouts for revenue would be reflected in the bulb price a grower would offer, (*i.e.*, a grower with by-product revenue could afford to sell garlic bulbs at lesser prices). Therefore, we are not granting a by-product offset for the garlic sprouts sold because to do so would double count any offsets taken into account in the pricing strategy of the growers included in the Azadpur APMC data used to value the intermediate product.

## **Company-Specific Issues:**

### **Comment 6: Individual Margin Calculation for Qingdao Saturn**

Qingdao Saturn argues that the Department is obligated to calculate an individual rate for it. Specifically, because it is the only company seeking voluntary respondent treatment in this proceeding, Qingdao Saturn states that individual examination of it for the final results would not be unduly burdensome to the Department. Additionally, Qingdao Saturn argues that the intent of section 782(a) of the Act for requesting voluntary respondent treatment is mandatory and Congress did not provide the Department with the exception of administrative interpretation. Therefore, Qingdao Saturn argues that the Department must calculate an individual rate for Qingdao Saturn for these final results, as directed by Congress pursuant to section 782(a) of the Act.

Additionally, Qingdao Saturn argues that the Department should calculate an individual rate for it because the calculation would not require significant analytical resources. Qingdao Saturn states that the simple antidumping margin calculation for its two sales demonstrates that the Department's argument that it does not have resources to perform this calculation is without merit. Additionally, Qingdao Saturn argues that the Department has analyzed and verified Qingdao Saturn's submitted information in the tenth new shipper review. Accordingly, Qingdao Saturn argues that the Department can calculate an individual rate for Qingdao Saturn with confidence because its information was successfully verified in a prior proceeding.

Qingdao Saturn states that the Department should calculate an individual rate because Petitioners do not oppose Qingdao Saturn's request. Contrary to the Department's statements in the Preliminary Results, Petitioners submitted a letter on October 24, 2007, that withdrew their "opposition to the request made by Qingdao Saturn" for voluntary respondent treatment. Accordingly, Qingdao Saturn argues that the Department's decision in the Preliminary Results not to calculate an individual rate for Qingdao Saturn was not based on the full record of this proceeding.

Qingdao Saturn argues that the Department's decision not to calculate an individual rate for it in the Preliminary Results because the Department's resources were being expended on a non-responsive mandatory respondent is not relevant for the final results. According to Qingdao Saturn, the record of this proceeding demonstrates that the Department has expended very little resources in reviewing the non-responsive mandatory respondent. Therefore, Qingdao Saturn states that these resources can be allocated to calculating an individual rate for Qingdao Saturn for these final results.

Qingdao Saturn contends that the Department has the overall administrative resources to calculate individual rates for both responsive mandatory respondents and Qingdao Saturn for the final results. In the initiation of this proceeding, Qingdao Saturn argues that the Department gave no indication that it would not accommodate any request for voluntary respondent treatment, and thus, Qingdao Saturn proceeded to submit questionnaire responses with the expectation that the Department would fulfill its obligation under the antidumping duty law. Additionally, Qingdao Saturn argues that in previous proceedings of this Order the Department has had the administrative resources to handle a significant workload with a small team of analysts. Moreover, Qingdao Saturn notes that the Import Administration and the China/NME Compliance Office is tasked with efficiently administering the U.S. antidumping and countervailing duty laws involving China and other NME proceedings. Therefore, Qingdao Saturn concludes that it would be unequitable in the final results for the Department not to calculate an individual rate for Qingdao Saturn because of staffing problems.

Qingdao Saturn argues that the Department should calculate an individual rate for it because the application of an average rate to it would not reflect its actual production and sales experience. Specifically, Qingdao Saturn notes that both responsive mandatory respondents produced and exported to the United States types of garlic that were not produced by Qingdao Saturn. Additionally, in Yantai, Qingdao Saturn states that the CIT found that it is inappropriate to assign non-selected respondents any weighted-average antidumping margin that is not "reasonably reflective of potential dumping margins for non-investigated exporters or producers." See Yantai Oriental Juice Co., et. al. v. United States, Slip Op. 03-33, 27 CIT 477 (March 21, 2003) ("Yantai"). Accordingly, Qingdao Saturn concludes that it would be contrary to court precedent, as outlined in Yantai, to apply a weighted-average margin to Qingdao Saturn for the final results that is not representative of Qingdao Saturn's production experience.

Shanghai LJ states, that pursuant to its obligations under the WTO Antidumping Agreement, the Department must establish an individual calculated rate for a voluntary respondent that fully cooperates with the review, such as Qingdao Saturn. Shanghai LJ states that the only exception is if the "number of exporters is so large that individual examination" would be "unduly burdensome." See section 782(a)(2) of the Act. Shanghai LJ notes that in the instant case, the Department initially selected three mandatory respondents, but that one of the selected mandatory respondents, Hongda, refused to participate in the review. Shanghai LJ contends that this "freed up" whatever resources the Department had dedicated to the review of Hongda. Shanghai LJ therefore concludes that the Department cannot rationally state that it had the resources to review Hongda, but that reviewing a voluntary respondent would be unduly burdensome. Moreover, Shanghai LJ states that the Department should designate Qingdao Saturn as a "substitute mandatory respondent" in place of Hongda, and should include the

margin calculated for Qingdao Saturn in the calculation for the average separate rate margin that is assigned to all qualifying respondents that do not receive an individual rate.

Petitioners did not comment on this issue.

**Department's Position:**

The Department disagrees with Qingdao Saturn and Shanghai LJ that it is obligated to calculate an individual rate for Qingdao Saturn. Section 782(a) of the Act gives the Department discretion, in light of its resources, to determine whether it is practicable to review a limited number of respondents and to choose the methodology it will employ to determine the mandatory respondents (*i.e.*, by statistical sampling or largest export volume). It further states that the Department shall examine voluntary respondents: (1) if they submit information requested of them by the Department by the date specified; and (2) if the number of voluntary respondents is not so large as to be unduly burdensome and inhibit the Department's timely completion of the review. As discussed in the Preliminary Results, one of the mandatory respondents, Hongda, did not respond to the Department's supplemental questionnaires that were due in August 2007, and also did not respond to the Department's follow-up letters in August and September 2007.<sup>22</sup> See Preliminary Results, 72 FR at 69657. Because Hongda stopped responding only a few months before the deadline for the Preliminary Results, the Department found that it was unable to complete the necessary analyses of Qingdao Saturn's submissions and issue the necessary questionnaires in sufficient time for the preliminary results. Based on our experience with respondents in current and prior segments of this proceeding, it is likely that detailed supplemental questionnaires would have been required in order to gather the information necessary to calculate an antidumping duty rate for Qingdao Saturn.

Additionally, the Department finds that the fact that Qingdao Saturn was verified in a prior proceeding does not demonstrate the accuracy of Qingdao Saturn's information that is on the record of this proceeding. Information for a company may vary from proceeding to proceeding and verifying Qingdao Saturn's information at such a late date would require significant analytical resources. At the point in the proceeding in which Hongda stopped participating, approximately two months before the signature date of the Preliminary Results, analyzing Qingdao Saturn's responses, issuing detailed supplemental questionnaires, and verifying Qingdao Saturn's responses prior to the final results would be extremely burdensome and would likely inhibit the timely completion of this proceeding. Furthermore, consistent with the statute, we selected the largest exporters and producers, and Qingdao Saturn was not one of them. Therefore, the Department has determined not to calculate an antidumping duty margin for Qingdao Saturn based upon the unverified information submitted by Qingdao Saturn.

Moreover, the Department disagrees with Qingdao Saturn that the application of an average rate to it would not reflect its actual production and sales experience. Qingdao Saturn's reliance on Yantai is misplaced. The issue in Yantai was not whether the margin was reasonably reflective based on the product mix produced by the voluntary respondent, but whether an average of a zero/de minimis margin with an adverse facts available margin was reasonably reflective of the

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<sup>22</sup> The Department's follow-up letter ultimately provided Hongda an extended due date of September 24, 2007, to respond to the Department's supplemental questionnaires.

potential margins for separate rate companies not receiving their own individual margin. See Yantai, 27 CIT at 486-87. Qingdao Saturn argues that because it only produced one type of subject merchandise, and that the responsive mandatory respondents, Dong Yun and Shanghai LJ, did not solely produce and sell that one type of subject merchandise, the weighted-average margin for those two companies would not reflect its experience. However, the Department notes that a large portion of Shanghai LJ's production and sales consisted of the same type of subject merchandise as Qingdao Saturn's. Accordingly, the Department finds that the weighted-average margin calculated from the two responsive mandatory respondents reasonably reflects the potential dumping margins for non-individually reviewed exporters or producers, including Qingdao Saturn. Accordingly, the Department is applying the weighted-average margin calculated for Dong Yun and Shanghai LJ to Qingdao Saturn for the final results.

**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 this review and the final weighted-average dumping margins in the Federal Register.

AGREE \_\_\_\_\_ DISAGREE \_\_\_\_\_

\_\_\_\_\_  
Stephen J. Claeys  
Acting Assistant Secretary  
for Import Administration

\_\_\_\_\_  
Date