

June 11, 2007

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

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

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

SUMMARY

We have analyzed the case and rebuttal briefs of interested parties in the 11th administrative review and concurrent new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China ("PRC"). As a result of our analysis, we have made changes to Fresh Garlic from the People's Republic of China: Partial Rescission and Preliminary Results of the Eleventh Administrative Review and New Shipper Reviews, 71 FR 71510 (December 11, 2006) ("Preliminary Results").¹

¹ The specific calculation changes for: Jinxiang Dongyun Freezing Storage Co. can be found in 11th Administrative Review of Fresh Garlic from the People's Republic of China: Analysis for the Final Results of Jinxiang Dongyun Freezing Storage Co., Ltd. ("Dongyun Final Analysis Memo"). The specific calculation changes for Jinxiang Shanyang Freezing Storage Co., Ltd. can be found in 11th Administrative Review of Fresh Garlic from the People's Republic of China: Analysis for the Final Results of Jinxiang Shanyang Freezing Storage Co., Ltd. ("Shangyang Freezing Final Analysis Memo"). The specific calculation changes for Sunny Import & Export Limited can be found in 11th Administrative Review of Fresh Garlic from the People's Republic of China: Analysis for the Final Results of Sunny Import & Export Limited ("Sunny Final Analysis Memo"). The specific calculation changes for Jining Trans-High Trading Co., Ltd. ("Trans-High") can be found in 11th Administrative Review of Fresh Garlic from the People's Republic of China: Analysis for the Final Results of Jining Trans-High Trading Co., Ltd. ("Trans-High Final Analysis Memo"). The specific calculation changes for Shandong Longtai Fruits & Vegetables Co., Ltd. can be found in 10th New Shipper Review of Fresh Garlic from the People's Republic of China: Analysis for the Final Results of Shandong Longtai Fruits & Vegetables Co., Ltd. ("Longtai Final Analysis Memo"). The specific calculation changes for Qingdao Camel Trading Co., Ltd. can be found in 10th New Shipper Review of Fresh Garlic from the People's Republic of China: Qingdao Camel Trading Co., Ltd. ("Qingdao Camel Final Analysis Memo"). The specific calculation changes for Qingdao Saturn International Trade Co., Ltd. can be found in 10th New Shipper Review of Fresh Garlic from the People's Republic of China: Analysis for the Final Results of Qingdao Saturn International Trade Co., Ltd. ("Qingdao Saturn Final Analysis Memo"). The specific calculation changes for XuZhou Simple Garlic Industry Co., Ltd. can be found in 10th New Shipper Review of Fresh Garlic from the People's Republic of China: XuZhou Simple Garlic Industry Co., Ltd. ("XuZhou Simple Final Analysis Memo").

We recommend that you approve the positions we have developed in the “Discussion of the Issues” section of this Issues and Decision Memorandum. Below is the complete list of the issues in this antidumping duty administrative review for which we received comments and rebuttal comments from interested parties:

I. GENERAL ISSUES:

- Comment 1: Intermediate Methodology
- Comment 2: Garlic Bulb Surrogate Value
 - A. Product Specificity
 - B. Broad Market Average
 - C. Public Availability
 - D. Contemporaneity
 - E. Tax and Duty Exclusivity
- Comment 3: Surrogate Financial Companies
- Comment 4: Surrogate Value for Labor
- Comment 5: Carton Surrogate Value
- Comment 6: Inclusion of Packing Weight in Movement Expenses
- Comment 7: Brokerage and Handling Surrogate Value
- Comment 8: Water Surrogate Value
- Comment 9: By-Product Offset
- Comment 10: Application of Packaging Materials in the Calculation of Normal Value

II. COMPANY-SPECIFIC ISSUES:

- Comment 11: Shangyang Freezing’s Polyethylene and Polyester Surrogate Values
- Comment 12: Dongyun’s Section C Database
- Comment 13: Dongyun’s Yield Loss

BACKGROUND:

The merchandise covered by the order is fresh garlic as described in the “Scope of the Order” section of the Preliminary Results. The period of review (“POR”) is November 1, 2004, through October 31, 2005. In accordance with section 351.309(c)(ii) of the Department of Commerce’s (“the Department”) regulations, we invited parties to comment on our Preliminary Results. On

January 31, 2007, GDLSK Respondents,² Jinxiang Dongyun Freezing Storage Co., Ltd (“Dongyun”), and Petitioners³ filed case briefs.⁴ On February 12, 2007, Dongyun, GDLSK Respondents, Qingdao Saturn, and Petitioners filed rebuttal case briefs.

I. GENERAL ISSUES

Comment 1: Intermediate Methodology

Dongyun argues that its factors of production (“FOP”) data accurately reflect its costs and that the Department has set a standard for reporting FOPs that no agricultural company can meet. According to Dongyun, although it records garlic-growing labor hours on an attendance basis, it argues that it conservatively reported that its employees work ten hour days regardless of whether they worked a partial day. Dongyun asserts that it reported all labor hours and will accept a higher dumping margin that would reflect reality as a result of the Department using Dongyun’s reported labor hours. In addition, Dongyun argues that its yield loss methodology is the same as the Department’s methodology and therefore accurately captures yield loss.

Dongyun also contests the Department’s request for information pertaining to inputs used for crops during the off-season as irrelevant and unreasonable. Moreover, Dongyun disputes that its water consumption is an unknown variable and argues that it provided its water usage based on a formula provided by the water pump manufacturer. Dongyun also contends that the Department does not explain its objection to why using garlic seed from the previous year’s crop is an issue. Dongyun argues that verification difficulties do not exist and that it keeps accurate financial records. Dongyun asserts that meeting the demands outlined by the Department for using the growing inputs is irrelevant and arbitrary.

In addition, GDLSK Respondents argue that in applying an intermediate input methodology to calculate normal value (“NV”) for the Preliminary Results, the Department incorrectly cited PVA, Mushrooms and the Fish Fillets Investigation as precedent. See Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People’s Republic of China, 68 FR 4753 (August 11, 2003)(“PVA”) at Comment 1 (which cites to Certain

² Shandong Longtai Fruits and Vegetables Co., Ltd. (“Longtai”), Linshu Dading Private Agricultural Products Co., Ltd. (“Dading”), Jinxiang Shanyang Freezing Storage Co., Ltd. (“Shanyang Freezing”), Sunny Import & Export Limited (“Sunny”), and Jining Trans-High Trading Co., Ltd. (“Trans-High”) are collectively referred to as “GDLSK Respondents.”

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

⁴ Qingdao Camel Trading Co., Ltd. (“Qingdao Camel”), Qingdao Saturn International Trade Co., Ltd. (“Qingdao Saturn”), XuZhou Simple Garlic Industry Co., Ltd. (“Xuzhou Simple”), and Qingdao Xintianfeng Foods Co., Ltd. (“QXF”) did not submit briefs.

Preserved Mushrooms from the People’s Republic of China: Final Results of First New Shipper Review and First Antidumping Duty Administrative Review, 66 FR 31204 (June 11, 2001)(“1st Mushrooms”) at Comment 2); see also Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 68 FR 37116 (June 23, 2003) (“Fish Fillets Investigation”) at Comment 3. GDLSK Respondents contend that the intermediate input methodology was used in these three cases to value an input that was a component of the subject merchandise and not the subject merchandise itself. GDLSK Respondents and Dongyun contend that in contrast to PVA, 1st Mushrooms and the Fish Fillets Investigation, the Department is applying a surrogate value to the garlic bulb, which is not an intermediate product but the actual product subject to the dumping order. Moreover, GDLSK Respondents and Dongyun argue that as the Department’s surrogate value for the garlic bulb, the Azadpur APMC Bulletin prices reflect an arm’s length sale of the finished subject merchandise, *i.e.*, fully-processed, fresh garlic, packaged for resale and the addition of any other surrogate values to account for processing, *e.g.*, packing, surrogate financial ratios, results in double counting.⁵

Petitioners counter Dongyun’s arguments that the intermediate input methodology is unsupported by the statute and the Department’s practice in other cases. Petitioners argue that use of the intermediate input (*i.e.*, raw garlic bulb) in this case, rather than the upstream FOPs, is fully consistent with the Department’s practice in PVA, 1st Mushrooms and the Fish Fillets Investigation. According to Petitioners, the Department determined to use an intermediate input methodology because it would produce more accurate results, which has nothing to do with whether the intermediate inputs in question are within the scope of the case.

Moreover, Petitioners challenge Dongyun’s assertions with regard to labor and water usage, and address Dongyun’s claims with respect to accounting for off-season crop information. Petitioners argue that the Department has found, during on-site monitoring of the harvest process, that the Respondents’ production records are not likely to be accurate in the context of the general conditions under which, and the general manner in which, those records are compiled and maintained. Accordingly, Petitioners assert that the Department has reasonably concluded that use of the intermediate input methodology, with regard to Chinese fresh garlic production, is much more likely to result in accurate NVs for the respondent than the Department’s normal FOP methodology.

In addition, Petitioners claim that use of the intermediate input valuation methodology does not penalize the Respondents for a lack of cooperation. Rather, Petitioners maintain that this approach was chosen because the Department believes that it will achieve the most accurate

⁵According to GDLSK Respondents, if the Department finds the respondents’ data inadequate, the statute directs the Department to base NV on the price at which comparable merchandise produced in a comparable market economy is sold in other countries. See section 773 of the Tariff Act of 1930, as amended (“the Act”). GDLSK Respondents contend that section 773 of the Act does not authorize the Department to allegedly inflate the surrogate price by including additional FOPs. Therefore, GDLSK Respondents assert the Department has improperly “inflated” the NV of the garlic bulb by adding further FOPs to the resale price of the subject merchandise itself.

antidumping analysis using verified data, and that it allows the Department to avoid the application of AFA.

Further, Petitioners maintain that record evidence does not support GDLSK Respondents' arguments that Azadpur APMC data represents fully processed, fresh garlic packaged for resale, and that the Department double counted the intermediate input value when it added a yield loss factor and further processing FOPs.⁶ Petitioners assert that there is no record evidence in these reviews which indicates that the fresh garlic sold in India is as highly processed as that produced for export in China.⁷

Petitioners also dispute GDLSK Respondents' argument that "super-A" grade garlic ("super-A") prices should not be used to value garlic bulb because there is no relationship between market prices of garlic and the costs incurred to produce such garlic. Petitioners point out that the Agricultural Information Marketing Network ("Agmarknet") data reflects prices of the small-bulb garlic produced and sold in India, while the Azadpur super-A prices represent larger size garlic bulbs that more closely resemble the Chinese garlic under review. Petitioners argue that in past reviews Respondents did not claim that the Agmarknet data represented resale prices when the Respondents urged the Department to apply the Agmarknet price instead of Azadpur prices. Petitioners argue that Respondents have embraced Agmarknet data in the instant review because the Agmarknet data provide a lower surrogate value than the Azadpur APMC Bulletins, although Agmarknet and Azadpur data both represent wholesale prices. Petitioners contend that the Agmarknet prices do not differentiate between the various grades of garlic, and therefore, represent artificially low, basket category prices in which large volumes of low-priced, small bulb-size garlic is averaged with smaller volumes of higher-priced large bulb garlic. Moreover, Petitioners argue that GDLSK Respondents are confused in citing to 19 USC section 1677b(c)(2) and arguing that the Department's use of the intermediate input method in this case is based on application of the exception to valuing the FOPs in NME cases. Instead, Petitioners contend that the intermediate input valuation methodology is a standard method which is authorized by section 1677(b)(c)(1)(B) of the Act, and is not based on the alternative NV methodology of section 1677b(c)(2) of the Act as cited by GDLSK Respondents.

Department's Position:

We continue to believe that the use of the intermediate input methodology is appropriate for these final results. In the course of these reviews, the Department requested and obtained a vast amount of detailed information from the respondents with respect to each company's garlic production practices. Based on our analysis of the information on the record and for the reasons

⁶ According to Petitioners, there would be no double counting of overhead or profit as long as the Department uses a financial statement from a non-integrated Indian company that purchases an intermediate product for further processing into a finished product to derive the financial ratios applied in the final results.

⁷ We address this issue more fully in Comment 2, below.

outlined in the Intermediate Product Memo, we determined that the respondents are unable to accurately record and substantiate the complete costs of growing garlic. See Memorandum to the File through James C. Doyle, Director, Office 9 and Alex Villanueva, Program Manager, Office 9 from Paul Walker, Senior Analyst, Office 9: 11th Administrative Review and New Shipper Review of the Antidumping Duty Order on Fresh Garlic From the People's Republic of China: Intermediate Input Methodology, November 30, 2006 ("Intermediate Product Memo") at Appendices A-E.

The Department conducted a thorough analysis of each respondent's reported FOPs and attached to the Intermediate Product Memo company-specific appendices citing to each instance in which the respondent's respective questionnaire responses and verification reports that support our determination. Specifically, we found that respondents in this industry do not track actual labor hours incurred for growing, tending, and harvesting activities and, thus, do not maintain appropriate records which would allow them to accurately quantify, report and substantiate this information. Second, we found significant 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, respondents lease the land on which the garlic is grown, and most respondents report 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 or identify all of the FOPs necessary to grow and harvest garlic, significantly inhibiting the Department's ability either to conduct a meaningful verification or to analyze reported information. See Intermediate Product Memo.

Record evidence refutes Dongyun's arguments that the Department has no basis to determine that its data is insufficient or unverifiable because the Department did not choose to verify Dongyun's questionnaire responses during this administrative review. Record evidence clearly demonstrates that Dongyun does not record the actual labor hours worked, as explained in detail in the Intermediate Product Memo at the "Labor" section of Appendix C and, therefore, has not been able to report accurate labor hours for its farmers in the planting, tending, and harvesting of garlic.

Moreover, with respect to yield loss, we agree that Dongyun accurately calculated its processing yield loss for fresh and peeled garlic using information kept in its normal course of business. However, Dongyun 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. Specifically, Dongyun does not record the weight of the garlic upon harvest. Instead, Dongyun records the weight of the harvested garlic after it has been dried in the field and after the roots

and stems have been trimmed.⁸ Therefore, we continue to find that we do not have the information necessary to accurately capture a proper yield loss in Dongyun’s margin calculations.

Dongyun reported that certain inputs were placed into the soil for the off-season corn crop.⁹ Dongyun has not disputed this finding in this proceeding. Thus, the record clearly demonstrates that Dongyun’s reported upstream inputs used to produce the raw garlic bulb are not accurate. Therefore, regardless of whether we verified certain other of Dongyun’s provided information, the factual information provided on the record by Dongyun supports our decision that it is appropriate to calculate Dongyun’s NV using the intermediate input methodology.

Regarding Dongyun’s arguments that the Department has set a standard for reporting FOPs that no agricultural company can meet, 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.

The GDLSK Respondents argue that the intermediate product in this case (i.e., the raw garlic bulb) is subject merchandise, unlike the cases in PVA, 1st Mushrooms or the Fish Fillets Investigation, and therefore, an intermediate input methodology is impermissible in this case. The GDLSK Respondents mischaracterize the raw garlic bulb as the subject merchandise exported to the United States. The following products which are imported into the United States are subject to this administrative review:¹⁰

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

⁸ See Intermediate Product Memo, at the “Yield Loss” section of Appendix C.

⁹ See Intermediate Product Memo at Appendix E.

¹⁰ See sections 735(b)(1) and 736(a) of the Act (explaining that the antidumping order covers “imports”).

As we noted in the 10th Garlic Final, the raw garlic bulb which is harvested from the ground is not immediately shipped to the United States, but instead requires at least a minimum amount of processing and packing prior to export.¹¹ See Fresh Garlic from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 71 FR 26322, 26328 (May 4, 2006)(“10th Garlic Final”) at Comment 2. Thus, the garlic that is pulled from the ground is not the final product that is exported to the United States.¹² Moreover, in the 10th Garlic Final we found that the use of an intermediate input did not result in double-counting. See 10th Garlic Final at Comment 1. Moreover, according to 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.” Therefore, we find that valuing the intermediate product with a surrogate value for a whole garlic bulb, rather than respondents’ reported upstream FOPs that go into producing that intermediate input, does not result in double counting.

We also disagree with GDLSK Respondents’ argument that the Department must value each and every FOP separately pursuant to section 773(c)(1) of the Act. Using the intermediate input methodology, as we did in these reviews and in PVA, 1st Mushrooms and Fish Fillets Investigation, is consistent with section 773(c)(1)(B) of the Act because we valued Respondents’ reported FOPs. The intermediate input methodology merely allows the Department to value the intermediate product (in this case the raw garlic bulb) in lieu of valuing the upstream inputs used to produce that intermediate product. Valuing the intermediate input in this way constitutes the “best available information,” in accordance with section 773(c)(1)(B) of the Act. Accordingly, we calculated NV in these reviews by starting with the value of the intermediate product, and then adding to this value respondents’ processing and packing costs. We then adjusted for processing yield loss, and in so doing, relied on the processing and packing FOPs, and yield loss figures, as reported by the respondents. Thus, our calculation of NV is in accordance with section 773(c)(1)(B) of the Act.

The GDLSK Respondents argue that the only alternative to valuing each and every FOP separately under the Act is found under section 773(c)(2). We disagree. That alternative to the standard FOP analysis is only applied should the Department conclude that it simply is unable to

¹¹ For example, we have learned through the conduct of several administrative and new shipper reviews that the garlic harvested from the ground is, at a minimum, cleaned to remove the outer skins in order to give the garlic bulb its characteristic white, fresh appearance. This whole bulb garlic is then typically packed in mesh bags and cartons for shipment to the United States. In the case of peeled garlic, the processing is more extensive and typically involves additional labor, energy, and several packing inputs (including the use of an antiseptic solution and nitrogen gas).

¹² In this review, unlike the last review, the GDLSK Respondents argue that the Department should value garlic bulbs using Agmarknet because the prices at Azadpur APMC are resale prices. First, we note that the Agmarknet data is not on the record of this review. In addition, we note that Agmarknet publishes data submitted to it by APMCs in India; thus, the type of data on the record for Azadpur APMC is the source data for the GDLSK Respondents’ proposed alternative surrogate value.

apply the FOP analysis to a Respondent's overall reported data. As we have noted, 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. Thus, there is no need to apply section 773(c)(2) of the Act.

Finally, with regard to the GDLSK Respondents' claims that there is no relationship between the cost incurred to grow garlic and the ultimate size of the garlic, this argument is simply illogical. Garlic seed is one of the factors, in fact the primary factor, that comprises the harvesting FOPs. The Department has explained in past reviews that in a market economy garlic seed is valued higher if it is larger in diameter and that larger seed most often produces larger garlic bulbs. See *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 34082 (June 13, 2005) ("9th Garlic Final") at Comment 2. Thus, a larger cost is associated with the production of the larger intermediate value. GDLSK Respondents' arguments selectively ignore this very basic relationship of seed to bulb values.

Comment 2: Garlic Bulb Surrogate Value

A. Product Specificity

GDLSK Respondents and Dongyun dispute that record evidence shows that super-A is most similar to the subject merchandise. According to GDLSK Respondents, there is no information on the record that defines super-A, and therefore, no conclusion can be drawn that super-A is more specific to the input in question. GDLSK Respondents argue that the Department should value the garlic bulb using Agmarknet or World Trade Atlas ("WTA"). GDLSK Respondents assert that the Department has found Agmarknet data acceptable in previous reviews and that Agmarknet and WTA are specific to the input in question.¹³ GDLSK Respondents and Dongyun contend that the Department must explain its reasoning for using the Azadpur APMC super-A data over the other data on the record.

Dongyun notes that Petitioners stated that "A grade" garlic is typically 40-55 millimeters ("mm")¹⁴ and thus, Dongyun argues that because garlic is sold in 5mm increments, that super-A must be 60mm and above. In addition, Dongyun asserts that it sells garlic in the size range of 30-65mm and that, if the Department continues to value Respondents' garlic bulb input with Azadpur APMC data, the Department should average garlic grades B, A, and super-A to calculate a garlic bulb surrogate value. Moreover, Dongyun argues that it sells garlic in container-load quantities (22,000 kilograms ("kg") each), while the prices the Department used were for 40kg sacks, which results in a higher per-kg value. Thus, Dongyun contends that import data would represent an India-wide average and provide quantities more similar to Dongyun's.

¹³ Dongyun argues that Agmarknet and WTA are contemporaneous, publicly available and represent broad market averages.

¹⁴ See Petitioners' August 31, 2006 letter at Exhibit 28.

Petitioners claim that record evidence supports the conclusion that super-A prices from Azadpur are similar to the subject merchandise.¹⁵ Petitioners argue that the record clearly establishes that super-A is for a bulb size which is greater than 40mm. See Petitioners' August 31, 2006, submission at Exhibit 1. With respect to Dongyun in particular, Petitioners note that Dongyun reported that the garlic it sold ranges in diameter from 55mm to 65mm and that its peeled garlic ranges in size from 45mm to 60mm, which it argues, therefore makes super-A grade garlic a perfect match to Dongyun's actual experience. Moreover, Petitioners allege that the Azadpur APMC is located in the long-day growing region of north India, and the super-A garlic grade was created in order to account for these larger-sized garlic bulbs coming from this region where the Agrifound Parvati varieties are grown. By contrast, Petitioners argue that smaller local varieties remain the predominant type of garlic grown in India. Accordingly, Petitioners maintain that the price for super-A reflects an accurate market value for the larger China variety bulbs. In addition, Petitioners argue that comparable quantities (i.e., Dongyun's comparison between the containers in which it ships its subject merchandise versus the packing of raw garlic bulb at Azadpur APMC) is not a part of the Department's analysis for selecting the "best available information." Further, Petitioners assert that the volume of Dongyun's sales of garlic is not relevant and has no bearing on the appropriateness of one surrogate value over another, and should not trump product comparability.

Dongyun rebuts Petitioners' assertion that super-A garlic most closely matches respondents' garlic input. Dongyun contends that Petitioners have made contradictory statements concerning their consultant's study and therefore, the Department cannot trust statements made by Petitioners' consultant.

Department's Position:

We find the Azadpur Agricultural Produce Marketing Committee's ("APMC") "Market Information Bulletin" (the "Bulletin") to be the best available information to value Respondents' garlic bulb input (the intermediate product) because it is specific to the product in question, represents a broad market average, is publicly available, is contemporaneous with the POR and is tax and duty exclusive. The only other alternative garlic bulb surrogate value on the record of these reviews is from WTA. While we find that WTA is equally publicly available, contemporaneous and tax and duty exclusive, we also find that WTA is not specific to the input in question and does not represent as great a broad market average as the Bulletin data for the reasons set forth below.

Regarding GDLSK Respondents' arguments concerning Agmarknet as an alternative garlic bulb surrogate value, we disagree. We note that no Agmarknet values are on the record of this review. Section 351.301(c)(3)(ii) of the Department's regulations allow interested parties to submit factor

¹⁵ Petitioners point to the record evidence demonstrating that "S.A." is the abbreviation for super-A and is one of several identified types of garlic cited in the APMC. See Petitioners' January 26, 2007 submission at Attachment 1.

value information up to 20 days after the preliminary results. Consequently, we note that after the preliminary results, parties had an opportunity to place Agmarknet data on the record, but did not. The Department cannot use information not on the record of this review for purposes of valuing garlic bulb, and thus, we have declined to consider Agmarknet as an alternative garlic bulb surrogate value.

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 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) ("Artist Canvas") at Comment 2; see also Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the First Administrative Review, 71 FR 14170 (March 21, 2006) ("1st Fish Fillets") at Comment 3A. The Department undertakes its analysis of valuing the FOPs on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry. See Glycine from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 70 FR 47176 (August 12, 2005) ("2005 Glycine Final") 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) ("Crawfish") at Surrogate Value Information - Introduction.

At the Preliminary Results we used prices for super-A garlic to value Respondents' garlic bulb input. The Bulletin is published by Azadpur APMC on each trading day and contains, among other things, a list of all fruits and vegetables sold on the previous trading day, the amount (by weight) of each fruit or vegetable sold on that day and a low, high and modal price for each commodity sold. For these final results we continue to find that the Bulletin contains data which is the most specific information on the record of these reviews to the input in question. The Department has concluded for the last several reviews that the vast majority of the evidence indicates that the size of both the garlic seed and garlic bulbs is given significant value in the marketplace. Thus, for example, in India, the garlic bulb variety known as Agrifound Parvati is larger than the standard garlic grown and sold in India, and as a result is sold at a higher price than standard Indian garlic. See 10th Garlic Final at Comment 2. Thus, the Department determined it is important to use surrogate Indian garlic values reflecting sales of garlic bulbs of similar diameter to that of the Respondents' merchandise during the POR.

In the most recently completed administrative review, the Department relied on the assumption that the "China" variety bulb, found in the Agmarknet database, is reflective of the larger bulb used by respondents in the production of subject merchandise. See 10th Garlic Final at Comment 2. For the instant review, as we explained in the Preliminary Results, the Department now finds

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, which we find to be more specific than relying on the China variety bulb data from the previous administrative review. First, we note that during the POR garlic ranging from 40 - 55mm was identified in the Bulletin as size A garlic. See Petitioners' September 12, 2006 submission at Exhibit 28. Second, we note that, as of May 2006, the Bulletin contained a new category, super-A, which is defined as 40mm garlic and above.¹⁶ See Petitioners' August 31, 2006 submission at Exhibit 1. Moreover, we note that the garlic entered into the United States by respondents during the POR ranged from 40mm to above 70mm.¹⁷ Thus, we have used surrogate values derived from this information.

In the Preliminary Results, the Department used only super-A values in its calculations. For these final results, however, using respondents' size data on the record, the Department calculated a surrogate value based on the most appropriate Bulletin data. We have concluded that a more accurate analysis would be for the Department to use size A values averaged with deflated super-A values, for those respondents which have a garlic bulb input which overlaps the grade A and super-A sizes. Specifically, we used the data points for A grade garlic to capture respondents' inputs of garlic which ranged from 40 - 55mm and used super-A data points to capture the Respondents' garlic input ranged greater than 55mm. For those Respondents with a garlic bulb input which exceeds 55mm, we have used only super-A values. See Memorandum to the File through Alex Villanueva, Program Manager, Office 9 from Paul Walker, Senior Analyst, Office 9: 11th Administrative Review and New Shipper Review of Fresh Garlic from the People's Republic of China: Surrogate Values for the Final Results, dated June 11, 2007 at 2.

Dongyun's arguments that its sales of garlic are in container-load quantities (22,000kg each), while the Azadpur APMC prices are for 40kg sacks, we do not find this argument persuasive. We first note that the garlic sold at Azadpur APMC, and the garlic sold by Dongyun, are both on a per-kg basis. Second, to the extent that there may be a difference in pricing, Dongyun has not provided any record evidence supporting its assumption that a container load (22,000kg) of fully processed garlic is more representative than a sack (40kg) of unprocessed garlic.¹⁸ Moreover, we note that several tons of garlic are sold at Azadpur APMC each day, which are packed in 40kg

¹⁶ Although the GDLSK Respondents argue that there is no definition of the term "S.A." on the record of this review, the Bulletin states that "S.A." is defined as "super-A." See Petitioners' January 26, 2007 submission at Attachment 1.

¹⁷ For the garlic sizes sold by Respondents during the POR, see individual analysis memoranda. While Dongyun claimed in its brief that it sold 30-40mm garlic, as well as larger sizes, that assertion is at odds with its March 30, 2006 submission, which demonstrates that its sales were for garlic above 40mm. See Dongyun's March 30, 2006 submission. Given that Dongyun's assertion that it sells garlic from 30 to 40mm appears only in its brief, well after the date for new factual information, the Department is according more weight to Dongyun's prior submissions to conclude that Dongyun sold only garlic sized 40mm and above. Id.

¹⁸ We note that Dongyun's shipments of garlic are packed in boxes, which weigh in the tens of kg range, and then placed into a container. Thus, Dongyun's containers contain many cartons of garlic, just as arrivals of garlic at Azadpur APMC may consist of many 40kg sacks.

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.

Regarding GDLSK Respondents' arguments concerning WTA as an alternative garlic bulb surrogate value, we disagree. As we noted in the last review, the Department found that the "China" variety bulb, found in the Agmarknet database, was more specific to the input in question than WTA, because the "China" variety is reflective of the larger bulb used by Respondents in the production of subject merchandise. See 10th Garlic Final at Comment 2. We also noted then, as now, that WTA contains no information as to the size of the garlic bulb, unlike the Bulletin data which contains a quantifiable garlic bulb size. The Department finds that WTA does not contain any information regarding the size of the garlic bulb. Therefore, it does not provide the degree of specificity necessary to adequately compare to Respondents' subject merchandise.

B. Broad Market Average

Petitioners argue that the Department appropriately determined that the super-A prices from the Bulletin are the most appropriate information to use for valuing Respondents' garlic bulb input because the super-A grade denotes a garlic bulb over 40mm in diameter. Petitioners note that for the Preliminary Results, the Department valued respondents' garlic bulb input using APMC data from the period May 2006 through July 2006 and deflated the data using the Wholesale Price Index ("WPI") rate for India. See 11th Administrative Review and New Shipper Review of Fresh Garlic from the People's Republic of China: Surrogate Values for the Preliminary Results, dated November 30, 2006 ("Prelim Surrogate Value Memo") at 4. Petitioners contend that the Department should use the additional APMC data, which Petitioners placed on the record because it is more representative of a broad market average and results in a more accurate garlic bulb surrogate value. See Petitioners' January 26, 2007, submission at Attachment 1.

GDLSK Respondents and Dongyun contend that super-A market prices do not represent a broad-based market average because the surrogate value is based on data for one state in India, sold in only one market, with only four months of sales data available. Dongyun argues that there is no proof that the Azadpur market is the largest market in India and that using data from one market is not representative of the country.

Department's Position:

We find that data from the Bulletin represents a broad market average. In past cases we have found official government publications to be reliable and credible sources of information. See e.g., Sebacic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 69 FR 75303 (December 16, 2004) (“Sebacic Acid”) 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 Azadpur APMC's website (www.apmcazadpurdelhi.com) stated that this particular APMC was India's “National Distribution Centre” for agricultural products and that it is the largest agricultural market in India. Because the Azadpur APMC Bulletin is published by NCT, an Indian government entity, we find the Bulletin to be a reliable source of information for surrogate values. Therefore, we find Azadpur APMC's claim to be India's agricultural “National Distribution Centre” and its claim to be the largest agricultural market in India to be reliable and credible.

When calculating surrogate values it is the Department's practice to use country-wide data instead of regional data when the former is available. See *Wuhan Bee Healthy Co., Ltd. v. United States*, Slip Op. 05-142 (CIT 2005) at 5. Moreover, we attempt to find the most representative and least distortive market-based value because the more broad-based the value, the greater the likelihood that the value is representative. See, e.g., 1st Mushrooms at Comment 5. Moreover, 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 500 points of data which represents over 22 million kg of garlic sold over the course of the POR from seven Indian states (UP, Kota, Raj, MP, Pun, Har, HP).¹⁹ In addition, we note that the data set used by the Department to calculate the garlic bulb surrogate value for super-A contains over 200 points of data, which represents over 7 million kg of garlic sold over a post-POR period of eight months from seven states (UP, Kota, Raj, MP, Pun, Har, HP). Thus, we find that the Bulletin is a reliable and credible representation of a broad market average.

We note that the only other alternative garlic bulb surrogate value on the record of this review, the WTA value, contains two data points representing 168 metric tons (“mt”) of garlic. In past cases the Department has found WTA data to constitute a broad market average. See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China, 72 FR 9508 (March 2, 2007) (“Activated Carbon”) at Comment 16. However, in the instant review, we find the Bulletin's prices constitute a broader market average than WTA because, as noted above, the surrogate value for garlic bulb derived from the Bulletin contains many more points of data, which represent a far greater quantity of garlic sold in India.

¹⁹ We note that in the 10th Garlic Final, the Agmarknet contained data for 21 Indian states. See 10th Garlic Final at Comment 2.

C. *Public Availability*

GDLSK Respondents argue that the Bulletin is not publically available because the bulletins are not available on the internet or in electronic form unless by written request to the market itself. GDLSK Respondents contend that the inaccessibility of the data undermines the publically available standard identified by the court in *Allied Pacific* and therefore, the Bulletin prices are not publically available. See *Allied Pacific Food (Dalian) Co., Ltd. v. United States*, 435 F. Supp. 2d 1295, 1315 (CIT 2006) (“*Allied Pacific*”). According to the GDLSK Respondents, the Court stated that the Department must balance the interests of transparency and verifiability that are served by public availability with other considerations, including the desirability of data that are as specific as possible to the raw material being valued. *Id.*

In addition, GDLSK Respondents assert that the Department should reject Petitioners’ use of double brackets in its August 31, 2006, and October 31, 2006, surrogate value submissions because there was no legitimate reason for such treatment. GDLSK Respondents contend that Petitioners’ argument for withholding information from disclosure, that it is a matter of the researcher’s personal safety and economic security, is not justified. GDLSK Respondents argue that the Department should reject the Bulletin for consideration in calculating surrogate values because it is not publically available. Finally, GDLSK Respondents argue that they need to examine the information currently double bracketed because the garlic bulb constitutes a large percentage of NV.

Petitioners note that they have submitted over 1,000 pages of the Bulletin, and that GDLSK Respondents have submitted pages from the Bulletin in their own recent surrogate value submission. In addition, Petitioners claim that, except for the name of the person who obtained the Bulletins, the “source” of the pricing data is stated very clearly on the top of each page of the Bulletin. Regarding GDLSK Respondents’ argument that because the Bulletin is not available on the internet it is not public, Petitioners counter that much of the surrogate value data used by the Department, or price quotes for inputs submitted by Respondents in NME economy cases, are not available on the internet. Petitioners maintain that the relative ease with which information can be obtained is not the criterion for determining whether information is publically available; instead, Petitioners contend, it is the data’s relevance and credibility. Petitioners claim that their use of double brackets in their super-A submission regarding the name of its foreign market consultant was proper and in accordance with the law. Petitioners argue that in this case no substantive information is being protected from disclosure; the only information that Petitioners withheld is the identity of the consultant. Petitioners claim that double-bracket protection for the identity of their consultant is needed because the consultants have certified their fear of economic or personal harm if their identities are revealed.

Department's Position:

Based on the record of this review, we find the Bulletin to be publically available. According to the market researcher, the Azadpur data is published daily, posted in the APMC's facilities for public viewing, is electronically archived and is available upon request. Furthermore, no party has challenged the authenticity or completeness of this data. We have, in electronic form, the complete universe of Bulletins published during the POR and for the eight month (super-A) period after the POR.²⁰ Moreover, we note that Respondents themselves received copies of the Bulletin and placed them on the record of this review. See GDL SK Respondents' January 16, 2007, submission at Exhibit 1. While we note that the Bulletin is not readily available on the internet, it is readily available to its intended audience, wholesalers and buyers at Azadpur APMC in India.

Moreover, we disagree with GDL SK Respondents' arguments that the inaccessibility of the data undermines the publically available standard identified by the court in *Allied Pacific* and that, the Bulletin prices are, therefore, not publically available. On remand, the Department explained that in the final determination of that case, it was unable to confirm whether certain data on the record represented the entire universe of available data. Specifically, the Department was concerned that only a selected sample had been submitted by the parties. See Final Results of Redetermination Pursuant to Court Remand ("Allied Remand"), dated October 27, 2006 at 24-28, available at <http://ia.ita.doc.gov/remands/index.html>. In addition, the Department confirmed the data that was not released to the public. *Id.* In this case, the Department has reviewed the Bulletin price data and is satisfied that each 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.

We also disagree with GDL SK Respondents' argument that the Bulletin is not publically available because double bracketing appears in Petitioner's market research report. We note that the only information double bracketed in the market research report concerns the personal identity of the market researcher who compiled the report; no other information is double, or single, bracketed in the report. See Petitioners' August 31, 2006, submission at Exhibit 1. The information contained in the report is public, and as noted above, the primary surrogate value source, the Bulletin, 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) ("8th Garlic Final") at Comment 1.

²⁰ We have Bulletins for every trading day and each Bulletin contains a header page and signature page.

In past cases the Department has found WTA data to be publicly available information. See, e.g., Activated Carbon at Comment 16. We continue to find that WTA is publicly available information in these reviews.

D. Contemporaneity

GDLSK Respondents and Dongyun assert that the Department used four months of post-POR data and ignored contemporaneous surrogate values on the record. As noted above, GDLSK Respondents posit that they provided alternative surrogate values for garlic bulb from Agmarknet and WTA, asserting that the Department has found Agmarknet data acceptable in previous reviews and that Agmarknet and WTA are contemporaneous, publicly available, represent broad market averages, and are specific to the input in question. GDLSK Respondents and Dongyun contend that the Department must explain its reasoning for using the Azadpur APMC super-A data over the other data on the record.

GDLSK Respondents assert that using the additional nine months of data Petitioners placed on the record does not constitute a broad market average because the prices still only account for one agricultural market. GDLSK Respondents and Qingdao Saturn contend that using prices further removed from the POR are even less representative of prices from the POR. Specifically, GDLSK Respondents note that the additional data submitted by Petitioners result in a price almost double the prices from May 2006. GDLSK Respondents attribute this price increase to the fact that the incoming garlic supply decreased by 25 percent in 2006 at the Azadpur APMC.

Qingdao Saturn notes that the Department's standard practice is to use surrogate values contemporaneous with the POR. See Notice of Final Determination of Sales at Less Than Fair Value: Barium Carbonate from the People's Republic of China, 68 FR 46577 (August 6, 2003) at Comment 6. According to Qingdao Saturn, in prior cases, the Department selected a more contemporaneous surrogate value over a more product-specific value as support for the importance of contemporaneity in selecting surrogate values. See, i.e., Polyethylene Retail Carrier Bag Committee, et al., v. United States, Slip Op. 05-57, p. 43 (Dec. 13, 2005), 2005 WL 3555812 (CIT) at 17-22. Qingdao Saturn contends that based on the emphasis the Department places on contemporaneity, it should only use super-A Bulletin data from May 2006, the month closest to the POR.

The Petitioners did not comment on this issue.

Department's Position:

We agree in part with Respondents. The Department notes that its use in the final results of the more specific grade A data is only for garlic sized 40-55mm. We note that the data points for grade A garlic used to calculate the garlic bulb surrogate value are contemporaneous with the POR. The remaining data points which capture garlic sold in sizes over 55mm using super-A garlic values have been deflated in order to make them contemporaneous with the POR. It is the

Department's normal practice when using a surrogate value that post-dates the POR to deflate that surrogate value to be contemporaneous with the POR. See *Folding Metal Tables and Chairs from the People's Republic of China*; Final Results of Antidumping Duty Administrative Review, 71 FR 2905 (January 18, 2006) at Comment 6. This is a logical application of data on the record to our calculation because, despite the lack of contemporaneity of the information, the values are the most reflective of this FOP on the record. As explained above in section A of this comment, we will use both the POR contemporaneous data and post-POR data where applicable.

As noted above, there is no hierarchy in selecting the best information available to value a FOP. The Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the "best" surrogate value is for each input. See *Crawfish*. In this case, the bulb size significantly affects all FOPs and drives the selling price. Therefore, valuing the raw garlic bulb input while considering size is key. See *10th Garlic Final* at Comment 2. Regarding the super-A Bulletin data (post-POR data), it would not be appropriate for the Department to disregard surrogate value information which is otherwise specific to the input in question solely on the basis that it is post-POR data. See Notice of Final Determination of Sales at Less than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers from the People's Republic of China, 69 FR 20594 (April 16, 2004) at Comment 11.

The WTA data on the record of this review are contemporaneous with the POR,

E. Tax and Duty Exclusive

GDLSK Respondents argue that the Department's statement that there is no record evidence that the prices include taxes or duties is incorrect and contend that there are market fees (*i.e.*, unloading and weighing) and that transportation expenses must affect the price of the garlic sold at the Azadpur market. See *Preliminary Results* at 71520.

Petitioners did not comment on this issue.

Department's Position:

We find the Bulletin prices to be tax and duty exclusive. In the *10th Garlic Final* we found that the Agmarknet data are tax-exclusive, noting that the Agmarknet project was conceived and implemented to provide Indian domestic farmers "nationwide market information for wholesale produce" by facilitating the collection and dissemination of market information to better price realization by the farmers," thereby eliminating regional price distortions that might exist absent such relative information. See *10th Garlic Final* at Comment 2. The Bulletin is a subset of the Agmarknet data used in the last administrative review to value the whole garlic bulb. As noted above, the purpose of the Bulletin is to provide transparent agricultural pricing data to the public, *i.e.*, buyers and sellers. Therefore, we find that if Agmarknet data is tax and duty exclusive, the underlying source data, the Bulletin, must also be tax and duty exclusive. Furthermore, we note

that there is no record evidence that the Azadpur APMC levies taxes or duties on the products sold at the APMC. However, for these final results, the Department deducted seven percent from the garlic bulb surrogate value to account for the market fees imposed by Azadpur APMC. This seven percent rate was identified in the GDLSK Respondents' November 7, 2006, submission at Exhibit 1.

Regarding the GDLSK Respondents' assertion that weighing and unloading fees are incurred, we disagree. The weighing and unloading fees listed by Azadpur APMC are specifically for potatoes, onions, green vegetables and fruits, not for garlic. Id.

Regarding the GDLSK Respondents' argument that transportation expenses must affect the price of the garlic sold at the Azadpur market, we again disagree. The Bulletin indicates that it covers only wholesale prices of agricultural products. While it is possible that transportation and handling expenses are sometimes incurred by Indian farmers at Azadpur APMC, the Bulletin does not provide any information concerning transportation and handling expenses.

In past cases the Department has found WTA data to be tax and duty exclusive. See, e.g., Activated Carbon at Comment 16. We continue to find that WTA is tax and duty exclusive.

Comment 3: Surrogate Financial Companies

Petitioners note that the Department used the 2004-2005 financial statements of Limtex India Limited ("Limtex"), an Indian tea company, to value factory overhead, selling, general and administrative expenses, and profit for the Preliminary Results.²¹ See Prelim Surrogate Value Memo. According to Petitioners, the Department should use the financial statements of Mahabaleshwar Honey Producers Co-Operative ("MHPC"). See Petitioners' January 26, 2007 submission, at Attachment A.

Petitioners argue that Limtex's 2004-2005 financial statements show that Limtex both produces and purchases the main raw material input for processed tea: tea leaves. Petitioner's contend that because during fiscal year 2004-2005, Limtex's "Plantation-Chopra Project" schedule recorded over two million rupees of assets for items such as land and plantation, tractors, solar systems, and irrigation sets, that Limtex is an integrated producer of tea. Petitioners also note that Limtex subscribes to the Tea Research Association as part of its research and development efforts and has obtained loans from the Tea Board in India secured by mortgaging its land holdings. See Prelim Surrogate Value Memo at Attachment 1. According to Petitioners, using the financial statements of a company that both grows and processes the main agricultural input is not appropriate in this case because the Department uses an intermediate methodology that values the main raw material input. Therefore, Petitioners contend that the Department should

²¹ The Department used the same financial ratios in the previous administrative and new shipper reviews. See 10th Garlic Final at Comment 10.

use the financial statements of MHPC, a non-integrated honey processor, because the production process for honey is similar in complexity and level of integration for garlic processing.

Petitioners argue that the Department has used MHPC's financial statements for the honey case since its initiation and thus it has been established as a suitable surrogate company. See, i.e., Honey from the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Reviews, 71 FR 34893, 34895 (June 16, 2006). Petitioners contend that honey, as a product and how it is processed, is more similar to garlic than tea. Petitioners note that section 351.408(c)(4) of the Department's regulations direct the Department to value financial ratios with nonproprietary data collected from producers of identical or comparable merchandise in the surrogate country and therefore honey is a more appropriate choice than tea. Petitioners observe that the statute does not define "comparable merchandise," but the Department considers whether products have similar production processes, end uses, and physical characteristics. See Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China, 70 FR 24502 (May 10, 2005) ("Isos") at Comment 3. Petitioners contend that the Department has evaluated the complexity and duration of the processes in addition to the types of equipment used in production when determining whether a company has a similar production process. See Glycine from the People's Republic of China: Final Results of New Shipper Administrative Review, 66 FR 8383 (January 31, 2001) at Comment 7.

Petitioners also emphasize the importance of the financial company's comparability to the respondents' experience (*i.e.*, the level of integration between respondents and the surrogate producer). See Isos at Comment 3 (where the Department did not use HSH's financial information because it determined that HSH is not at a comparable level of integration as Jiheng and Nanning, and therefore HSH's financial data would be less comparable to that of Jiheng and Nanning). Thus, Petitioners contend that the Department should use MHPC's financial statements because they are a non-integrated processor of a comparable agricultural product. Petitioners state that, in the alternative, the Department should average the financial ratios of MHPC and Limtex. Petitioners argue that the Department has the discretion to choose among various surrogate sources when faced with the decision to choose between two reasonable alternatives.²² Petitioners contend that the record does not support that Limtex's financial experience is favored over that of MHPC and therefore the Department should either reject Limtex's financial statements or use them in conjunction with those of MHPC.²³

²² See, i.e., FMC Corp. v. United States, 2003 Ct. Intl. Trade LEXIS 19, *7 (CIT Feb. 11, 2003) *aff'd w/out op.*, 2004 U.S. App. LEXIS 3096 (Fed. Cir. Feb 9, 2004) (citing Technoimportexport, UCF America Inc. v. United States, 783 F. Supp. 1401, 1406 (1992)) (when Commerce is faced with the decision to choose between two reasonable alternatives and one alternative is favored over the other in their eyes, they have the discretion to choose accordingly).

²³ See 2005 Glycine Final at Comment 2 (for purposes of valuing overhead, SG&A, and profit, where such information is available, the Department may rely on financial statements of multiple surrogate companies).

Dongyun argues that the Department should continue using the financial statements of Indian tea companies. Dongyun asserts that there is no evidence supporting that the Indian honey industry is more comparable to garlic than the tea industry. Furthermore, GDLSK Respondents argue that the Department has previously determined that it is not appropriate to use the MPHPC financial statements. See 10th Garlic Final; see also Fresh Garlic from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 34082 (June 13, 2005)(“9th Garlic Final”). GDLSK Respondents argue that the Department found in the 10th Garlic Final and 9th Garlic Final that Limtex is not an integrated producer of tea because it purchased approximately ninety percent of its green tea requirements. Dongyun argues that, in the instant review, Petitioners failed to provide sufficient evidence to refute the Department’s findings in the 10th Garlic Final and 9th Garlic Final.

As noted above, Petitioners point to the line item “Plantation-Chopra Project” listed on Limtex’s fixed asset schedule as support for their argument that Limtex purchases the majority of its teas. GDLSK Respondents argue that Limtex’s membership in the “Plantation-Chopra Project” for research and development purposes is different than purchasing land for growing tea. GDLSK Respondents contend that no other information in Limtex’s financial statements indicates that it has stopped purchasing the majority of its tea.

Dongyun, GDLSK, and Qingdao Saturn also rebut Petitioner’s assertion that the Department should use a honey company to value financial ratios. Dongyun asserts that the Department must use financial statements that mirror Dongyun’s financial experience as an integrated producer of garlic during the POR. Dongyun argues that using the financial statements of a non-integrated company is not the best information available. Dongyun contends that Petitioners have not provided any information demonstrating that the Indian honey industry is more similar to the garlic industry than the tea industry. Dongyun, GDLSK Respondents, and Qingdao Saturn assert that garlic and tea are more similar in that they are both grown in soil and reflect common tasks such as planting, watering, fertilizing, harvesting, drying, etc. According to Dongyun, honey production is limited to filtering and bottling and thus, the financial statement of a tea producer is more comparable.

GDLSK Respondents and Qingdao Saturn contend that in order to evaluate whether a producer’s merchandise is identical or comparable, the Department has analyzed similarities in physical characteristics, end uses, and production processes. See Certain Cased Pencils from the People’s Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 67 FR 48612 (July 25, 2002) at Comment 5. GDLSK Respondents assert that garlic and honey have different physical properties and that honey is gathered, processed, and stored differently than garlic. GDLSK Respondents challenge Petitioners’ argument that processing honey is similar to garlic by arguing that there are more similarities between the processing of tea and fresh garlic. Qingdao Saturn contends that Petitioners provided no evidence to support their assertion that MPHPC’s production operations are more comparable to those of garlic producers than tea producers.

GDLSK Respondents purport that the Department has previously rejected the financial statements of other allegedly similar industries, such as coffee and preserved mushrooms. See 9th Garlic Final at Comment 5 (finding that the coffee industry is not comparable with the operations of the respondent garlic companies as the tea industry); see also 8th Garlic Final at Comment 7 (the Department found the financial experiences of tea producers more representative of the Chinese garlic producers than the producers of preserved mushrooms). GDLSK Respondents contend that MHPC has not been used as a suitable surrogate in previous garlic cases and that MHPC is a cooperative that is tainted by non-market forces.

Qingdao Saturn argues that MHPC's financial report is of poor quality and may be missing pages and thus, challenges the accuracy and completeness of the financial data. Specifically, Qingdao Saturn notes that the page numbers of the report are handwritten which makes it unclear whether the report is complete.²⁴ Thus, Qingdao Saturn asserts, the Department should not use MHPC's financial statements.

Department's Position:

We continue to determine that the 2004-2005 Limtex financial statements are the best available information on the record to value overhead, SG&A, and profit. In calculating surrogate values for overhead, SG&A and profit, the Department's policy is to use data from market-economy surrogate companies based on the specificity, contemporaneity, and quality of the data. *See, i.e., Brake Rotors from the People's Republic of China: Preliminary Results, Preliminary Partial Rescission and Postponement of Final Results of the Fourth Antidumping Duty Administrative Review*, 67 FR 557 (January 4, 2002). The Department's practice is, where information is available, to derive the overhead, SG&A, and profit values from producers of merchandise that is identical or comparable to the subject merchandise. *See 2005 Glycine Final*, 70 FR 47176 (August 12, 2005) at Comment 2. 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. 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 10,837,452kg of tea and produced 605,600kg. *Id.* Therefore, the Department finds that Limtex is mostly a tea processor, and therefore, can be used to value the intermediate product.

²⁴ See Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars from Belarus, 66 FR 33528 (June 22, 2001) at Comment 2 (the Department's practice is to disregard incomplete financial statements as a basis for calculating surrogate financial ratios where the statements may be missing key sections vital to the Department's analysis and calculations).

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" is undermined by the information contained in Schedules 16 and 21.

The Department disagrees with Dongyun's argument that we should use Limtex to value the financial ratios because it is an integrated producer, as Dongyun is also integrated. The Department is using an intermediate methodology for all respondents in the instant reviews and therefore, the financial experience of a non-integrated company is more representative of the financial experiences of the respondents.

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

As Respondents noted, the Department has previously determined that tea production is similar to that of garlic.²⁵ Petitioners placed the production process and description from one honey new shipper on the record of the instant reviews. See Petitioners' January 16, 2007 submission. According to Petitioners, the fact that honey processing is limited to an electrical pump, a filter, and finished-product drums makes it similar in complexity and integration with processing garlic. However, Petitioners fail to support their statements with factual information on how processing tea is more complex than honey and therefore, more similar to garlic. We note that tea and garlic are both agricultural products grown in the ground which need water, fertilizer, and other similar inputs to thrive, while honey is an animal by-product. Garlic processing does not require any equipment similar to what is used in the processing of honey, which leads the Department to question the purported similarity of the production experience of garlic and honey. Therefore, the Department finds no substantial evidence on the record to support the argument that using the financial statement of MHPC instead of the financial statements of Limtex would result in more accurate financial ratios.

²⁵ See 8th Garlic Final at Comment 8 (the Department determined that processing tea is more similar to processing garlic than mushroom producers because tea is not highly processed or preserved prior to sale); see also 9th Garlic Final at Comment 5 (the Department found coffee production to be more complex than tea or garlic production because it involves varying processing methods, some which require using extensive machinery and water).

Comment 4: Surrogate Value for Labor

GDLSK Respondents contend that the Department's policy of calculating a surrogate value for labor using data from numerous countries runs contrary to the basic tenets of the NME methodology. GDLSK Respondents and Dongyun assert 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. According to GDLSK Respondents, the Department is capable of calculating wage rates from comparable countries.²⁶ GDLSK Respondents argue that, to be consistent with the statute, the Department should calculate a wage rate based on the wage rate data from the surrogate country, in this case India, rather than on data from a basket of countries.

GDLSK Respondents assert that the Department should use the country-wide wage rate for India because it is the best information available on the record of this proceeding. Moreover, GDLSK Respondents argue that the regression analysis is distortive and results in calculated wage rates significantly higher than they actually are. GDLSK Respondents contend that, in this instance, the applied surrogate wage rate of \$0.97 per hour is 400 percent higher than the actual Indian labor rate of \$0.23 per hour. GDLSK Respondents assert that India's overstated wage rate is not an isolated example, but rather an illustration of a country whose wage rate is significantly higher than the actual wage rate based on the regression analysis.

Contesting the validity of the Department's regulations that require the use of this calculated wage rate, GDLSK Respondents dispute the stated reasoning behind the Department's regression wage rate analysis. Citing Chevron U.S.A. v. Natural Resources Defense Council, 467 U.S. 837, 842-43, *reh'g denied* 468 U.S. 1227 (1984), GDLSK Respondents state that a regulation cannot stand if it is "arbitrary, capricious, or manifestly contrary to the statute." They suggest that the Department's assertion that its regression analysis achieves greater accuracy simply because it employs more countries does not provide a valid justification for disregarding the plain language of the Act.

Furthermore, GDLSK Respondents refute the Department's claim that this methodology results in greater predictability and contend the highly complicated calculation is prone to errors. Thus, GDLSK Respondents advocate that the Department use the published country-wide labor rate from the primary surrogate country, *i.e.* India, which the GDLSK Respondents argue would result in greater predictability. GDLSK Respondents contend that the wage rate calculation conflicts with the Department's surrogate value policy because it incorporates China's per-capita gross national income ("GNP") by multiplying it by the results of the regression analysis.

²⁶ See Memorandum to the File, through James C. Doyle, Office Director, Office 9, Import Administration, and Alex Villanueva, Program Manager, Office 9, from Cindy Lai Robinson, Senior Analyst, Subject: Antidumping Duty New Shipper Reviews and 11th Administrative Review of Fresh Garlic from the People's Republic of China: Selection of a Surrogate Country, (November 30, 2006) ("Surrogate Country Memo") (The Department identified India, Indonesia, Sri Lanka, Philippines, and Egypt as countries economically comparable to the PRC).

In the alternative, GDLSK Respondents argue that the Department should use the 2004 wage rates because they contend that the 2003 wage rate calculation is flawed. GDLSK Respondents claim that the Department's 2003 data set for the wage rate calculation excluded 14 countries without providing an explanation for these exclusions. Quoting the Notice of Final Rule Making: Antidumping and Countervailing Duties, 62 FR 27367 (May 19, 1997), GDLSK Respondents state that in this notice, the Department justified the use of the regression-based methodology by saying that "more data is better," and that the regression-based methodology will, therefore, "lead to more accurate results." GDLSK Respondents contend that the omission of 14 countries directly conflicts with this justification. GDLSK Respondents argue that the Department overcame its selection criteria flaws when it calculated the 2004 wage rates and therefore should use the 2004 wage rate over the 2003 wage rate. See Expected Non-Market Economy Wages: Request for Comments on 2006 Calculation, 72 FR 949 (January 9, 2007).

Dongyun adds that it appears that the Department arbitrarily included and excluded countries in its basket of countries without assessing their comparability to China based on GNI. Dongyun requests that the Department place on the record a list of countries that the Department had information for but excluded from its calculations. Dongyun contends that the Department uses countries in its calculation that are not indicative of the labor rates in China. Dongyun argues that the Department has not met the statutory requirement in calculating wage rates because it did not use countries that are producers of the comparable merchandise, *i.e.*, garlic.

Qingdao Saturn asserts in its rebuttal brief that the Department should use the revised surrogate labor rate of \$0.83/hour.

Department's Position:

The Department has recalculated the wage rate used in the Preliminary Results and has determined to use US \$0.83 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 2006 calculations, which are based on 2004 wage rate data.

Consistent with the regulations and the statute, the Department's revised wage rate calculation applied to these final results relies on a significantly larger number of countries than was used in the Preliminary Results. 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 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.²⁷ 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 the GDLSK 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 effect the wage rate applied. A basket of "economically comparable" countries could be extremely small. For example, there are only three countries with GNI less than US\$1,000 in the Department's revised 2004 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 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

²⁷ 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.

the data.²⁸ This inevitable variability in the underlying International Labor Organization (“ILO”) data is especially true in the case of countries with a lower GNI where wage rates can be so low that even a difference of a few cents can appear to be enormous if represented in percentage terms.

While GDLSK Respondents point 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 58 countries included in the model lie above the regression line. India’s wage rate is the lowest reported wage rate in the Department’s data set, despite not being the 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.

Finally, in response to GDLSK Respondents’ contention that calculating wage rates using the PRC’s GNI is contrary to the Department’s surrogate value policy, the Department acknowledges that the GNI of an NME such as the PRC may reflect, at least to some extent, non-market income data, which is inherently unreliable. However, the Department finds that each NME’s GNI, as published in the World Bank Indicators, is the “best available” metric for establishing economic comparability for all surrogate values, including labor. There are no other sources or metrics available that would be untainted by the non-market nature of the economy underlying an NME’s GNI, nor has such a metric been suggested.²⁹ Further, an NME’s GNI is the metric that the Department routinely uses in NME cases to establish economic comparability of the surrogate country used to value other surrogate values. Given that there is no better source available or suggested, the Department finds no reason to deviate from its practice of relying on the PRC’s GNI in this case.

²⁸ For example, in the data relied upon for the Department’s revised 2004 calculation, observed wage rates did not increase in lockstep with increases in GNI in the five countries with GNI less than US\$1,000, for example: Nicaragua, with a GNI of US\$720, had reported a wage rate of US\$0.94 per hour while Sri Lanka, with a GNI of US\$850, had reported a wage rate of US\$0.33 per hour. See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Second Administrative Review, 72 FR 13242 (March 21, 2007) at Comment 8C.

²⁹ Though the Department cannot ensure that each NME’s GNI is untainted from any non-market influence, it can at least rely on third parties such as the World Bank, which is a reputable intergovernmental organization with reliable data collection methods. The World Bank collects national account data and converts GNI into U.S. dollars from national currencies in a consistent manner. GNI data are collected from national statistical organizations and central banks by visiting and resident World Bank missions, and in high-income, developed countries, the World Bank utilizes data from Organization for Economic Co-operation and Development (OECD) data files. The World Bank then applies the Atlas conversion factor to data from all countries alike, in order to reduce the impact of exchange rate fluctuations in the cross-country comparison of national incomes.

Comment 5: Carton Surrogate Value

GDLSK Respondents argue that the Department improperly valued cartons using HTS category 4819.10.10 from WTA and rejected domestic prices that were submitted from two different Indian box producers for packing boxes which are similar in size and characteristics to those used by Respondents. See GDLSK Respondents' August 31, 2006 submission at Exhibit 14. According to GDLSK Respondents, evidence shows that HTS category 4819.10.10 contains several types of specialty boxes and other products such as shoe boxes, tie boxes, aluminum foil, etc., and thus, the prices are distorted. Additionally, the GDLSK Respondents argue that these specialty boxes prices are not appropriate as they may include air freight charges. GDLSK Respondents assert that the WTA import data is aberrationally high and that pursuant to Shanghai Foreign Trade Enterprises Co., Ltd. v. United States, 318 F. Supp. 2d 1339, 1350 (CIT 2004), the Department should use price quotes to value cartons.

GDLSK Respondents further argue that the Department's rejection of using domestic data runs contrary to its established practice for using domestic prices from the surrogate country. See, i.e., Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty New Shipper Administrative Review, 63 FR 3085, 3087 (January 21, 1998). GDLSK Respondents maintain that the Department's decision to use WTA import data is contrary to legal precedent.³⁰ Therefore, GDLSK Respondents conclude that the Department should value cartons using domestic price quotes, which is consistent with established practice, court precedent, and business realities in addition to being more reflective of the cartons used by respondents.

Petitioners state that the Department properly used Indian import statistics to value cartons and that this is the best available information. Petitioners reference that in the 10th Garlic AR Final the Department found price quotes to be an unreliable source of valuation. Petitioners assert that the manner in which these price quotes were obtained is unclear and there is uncertainty regarding the completeness of the data. Petitioners assert that the Department should follow its past practice and use Indian import data to value cartons. See, i.e., Synthetic Indigo from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 68 FR 53711 (September 12, 2003) ("Synthetic Indigo") at Comment 11 (the Department chose to value polyethylene sacks and bags using publically available Indian import statistics over price quotes from Indian suppliers of plastic bags).

³⁰ See, i.e., Yantai Oriental Juice Co. v. United States, 26 CIT 605, 617 (June 18, 2002) ("Yantai") (the Court rejected the Department's use of import data instead of a domestic price on the record, stating that the Department failed to explain "how the use of seemingly more expensive imported coal data are the best available information."); see also Hebei Metals and Mineral Import and Export Corporation, et al v. United States, 366 F. Supp. 2d 1264 (CIT 2005) ("Hebei Metals").

Department's Position:

In accordance with our surrogate value selection criteria, we determined in this case that the Indian HTS category 4819.10.10, which is described as “boxes of corrugated paper & paper board,” represents the best available information on the record. Specifically, Respondents typically sold garlic using cardboard cartons which hold about 20 to 30 pounds of garlic. A review of imports under Indian HTS category 4819.10.10 indicates that such cartons are covered by this HTS category. Furthermore, the data is publicly available, contemporaneous, contains period-wide price averages and is net of taxes and import duties.³¹ Thus, the Department continues to believe that this is the best information on the record to value cartons.

As a general policy, the Department must be cautious in using selective price quotes. A party could, for example, receive ten quotes, and provide the Department with only the two or three it prefers. A party could also potentially influence the quote it receives from a company. There are many unknowns that accompany a price quote, so the Department does not favor the use of such information if other publicly available data are on the record as in this case.

We disagree with GDLSK Respondents that the price quotes they placed on the record are a more appropriate source for the surrogate values used to value cartons. Although the three price quotes that GDLSK Respondents suggest are contemporaneous, these price quotes appear to have been obtained from two Indian companies in direct response to a request for such prices. We find that these price quotes do not meet the criterion of public availability that the Department has historically relied upon when choosing appropriate surrogate values in order to lessen the possibility of manipulation of the values based on documents prepared specifically for use in trade remedy cases. No detail on the parties that requested the prices, or whether or not an affiliation existed between the requester and the Indian companies, was ever placed on the record. Without access to all the information on how the data were obtained (including the sources and any adjustments that may have been made), it is impossible to confirm that the data are complete and/or accurate. As pointed out in the Department's 10th Garlic AR Final at Comment 8, such previously non-public information is of unknowable validity unless verification is conducted of each quote.

The Department's analysis of the India Infodrive data on the record indicates that there are many different types of boxes covered by the Indian HTS category, but that fact alone does not undermine the use of the value. Most of the gift boxes and “specialty boxes” referenced by GDLSK Respondents are sourced from the PRC according to the import data. We removed imports from the PRC from our calculation of a carton value from the Indian import statistics because the PRC is an NME country. See Prelim Surrogate Value Memo at Exhibit 5. Therefore, most of the gift boxes and “specialty boxes” referenced are already excluded from our calculations.

³¹ See Import Administration Policy Bulletin No 04.1 Non-Market Economy Surrogate Country Selection Process (“Policy Bulletin 04.1”) at 1, available at <http://ia.ita.doc.gov>.

With regard to GDLSK Respondents' "air transportation" arguments, by their nature, import statistics have an element of general applicability to them. Therefore, as a surrogate value they may not necessarily reflect the exact carton experience of any one Respondent. Some companies may import cartons into the PRC by air, while others may not, and the Indian HTS category reflects all of these experiences, as GDLSK Respondents argue. This point alone, however, does not undermine the rationale discussed above. Furthermore, the Respondents have not submitted any documents on the record of this review demonstrating that their own domestic carton suppliers did not import the products into the PRC by air. Mere allegations of facts, absent any record evidence for support of such claims, cannot be a basis for undermining the use of publicly available, contemporaneous valuation data from Indian HTS categories in this case.

With respect to GDLSK Respondents' "aberrational" argument pursuant to the CIT decision in Shanghai Foreign Trade Enterprises, we disagree that the case is applicable here. In Shanghai Foreign Trade Enterprises, plaintiffs challenged the surrogate value on various grounds, alleging in particular that it was based on a quantity of pig iron, 1,132mt for the period of investigation, that is so small (less than one-tenth of one percent of Indian domestic consumption) as to be statistically and commercially insignificant when viewed against the total Indian domestic consumption of pig iron. In this case, the total quantity for Indian HTS category 4819.10.10 was 1,210,467kg during the POR, and GDLSK Respondents did not challenge that this quantity is, by any definition, commercially insignificant. Accordingly, the CIT's decision in Shanghai Foreign Trade Enterprises does not apply in this case.

Finally, GDLSK Respondents mistakenly rely upon Yantai and Hebei Metals to contend that the Department should have used domestic price quotations, rather than the Indian import statistics, when selecting surrogate values for cartons. In both Yantai and Hebei Metals, the CIT concluded that the Department must provide a reasonable justification for using import data over domestic data. Specifically, in Yantai, the CIT took issue with the Department's default choice of more expensive import statistics over domestic prices to value coal used in the production of apple juice concentrate, and remanded the Department's decision for a more detailed analysis. See Yantai, 26 CIT at 617. Upon remand, the Department determined that neither the import data, nor the more specific domestic values, were contemporaneous, and concluded that the more specific domestic prices were the appropriate source to value coal. See Yantai v. United States, Slip 2003-33 (CIT March 21, 2003) (affirming the remand results on this point). Similarly, in Hebei Metals, the CIT held that the Department failed to explain why the import data was the best available information or identify the type of coal used in the production process. See Hebei Metals, 366 F. Supp. 2d at 1271. The CIT remanded so that the Department could re-open the record for further information, but noted that simply because the domestic data was more specific did not mean it was more accurate. See Hebei Metals, 366 F. Supp. 2d at 1274 & 1276. Thus, in both cases, the CIT explained that the Department has an obligation to explain the basis for its selection of import statistics over domestic prices. These holdings, however, do not evidence a wholesale, one-size-fits-all "preference" for domestic prices, over import statistics, as suggested by GDLSK Respondents.

In this case, consistent with Yantai and Hebei Metals, we continue to find it appropriate to use values derived from Indian HTS category 4819.10.10 as the best available data because they are contemporaneous values derived from publicly available import statistics, which were representative of a range of prices throughout the POR, and sufficiently specific to the input in question. Accordingly, we have made no changes to our valuation of cartons and have used the Indian import statistics as the basis of this valuation.

Comment 6: Inclusion of Packing Weight in Movement Expenses

GDSLK Respondents argue that the Department should not apply the gross-weight factor (*i.e.* including the weight of all packing materials in kg to one kg of garlic) to international freight, United States brokerage and handling (“USBROKU”), U.S. Warehousing, and U.S. inland freight to Sunny, and brokerage and handling (“DBROKU”) to all GDSLK Respondents. GDSLK Respondents contend that all these movement expenses were incurred and paid for in market-economy currencies except DBROKU and therefore, represent actual costs. GDSLK Respondents also argue that all fields mentioned above were calculated on a net weight basis and therefore, the Department should apply the factors to net weight. GDSLK Respondents assert that adjusting the above-mentioned factors by the gross-weight factor causes distortion and overstates the expenses and therefore, the Department should not apply the gross-weight factor.

GDSLK Respondents also argue that the gross-weight factor should not be applied to domestic inland freight. GDSLK Respondents contend that the record shows that these services are paid on a container basis. Therefore, GDSLK Respondents assert that it is inappropriate to apply the surrogate freight weight to a gross weight inclusive of packing weight. Dongyun also challenges the Department on this issue arguing that it provided evidence to support that its service providers did not charge an additional fee for the weight of the packaging materials. See Dongyun’s January 26, 2007, submission.

Petitioners argue that the Department correctly applied a gross-weight factor. Petitioners contend that international freight was calculated on a gross weight basis because it was based on the total weight of a container and that inland freight was calculated in a similar manner. Petitioners also note that there is no information on the record that would indicate that brokerage and handling charges were calculated on a net weight basis. Petitioners assert that the Department should reject the letters from Dongyun’s service providers as untimely. Petitioners note that Dongyun originally provided these letters in its January 26, 2007, submission; however, Petitioners state, the letters do not contain information related to the surrogate valuation of brokerage and transportation expenses. Petitioners contend that the information in the letters are neither supported by documentary evidence nor verifiable, are untimely submitted and should, therefore, be rejected. Petitioners conclude that the Department properly applied a gross-weight factor because it is common industry practice for freight providers to charge based on the gross weight of a shipment and not the net weight.

Department's Position:

We agree with respondents, in part. As discussed below, the evidence on the record affirms the Petitioners' assertion that international freight and most inland freight were calculated on a gross basis, *i.e.*, including packing weight. In the Preliminary Results, we adjusted the movement expenses using a gross-weight factor because we did not have sufficient evidence that certain movement expenses incurred in India (*e.g.*, brokerage and handling expenses ("B&H")) were calculated on a gross-weight basis. Since the Preliminary Results, respondents submitted sufficient evidence that the surrogate values for these movement expenses were already calculated on a gross-weight basis. Furthermore, there is no evidence on the record that respondents shipped the subject merchandise on a net-weight basis, therefore, we determined not to make any adjustments with respect to these movement expenses for these final results.

In the Preliminary Results, we valued truck freight based on Indian daily rates per truck load from six major points of origin to five different destinations in India during the POR. Because we valued truck freight based on gross weight, we did not include packing weight in the calculation of domestic inland freight for these final results. See Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China, 72 FR 19690 (April 19, 2007) ("PSF") at Comment 5.

For domestic B&H expenses, as discussed in Comment 7 below, we valued the B&H expenses for these final results based on two Indian companies: Agro Dutch and Kejriwal. Our record shows that all two of these surrogate companies calculated their B&H based on a gross weight basis.³² Therefore, consistent with our past practice, we will not include packing weight in the calculation of domestic B&H expenses for these final results. See PSF.

With respect to international freight and other U.S. movement expenses (U.S. B&H, U.S. Warehousing, U.S. inland freight, etc.), because these services were provided by market economy companies and were paid for in market economy currencies, as noted by respondents, we used the actual price respondents paid to market economy suppliers, and will not include packing weight in the calculation of these expenses.

Comment 7: Brokerage and Handling Surrogate Value

In the Preliminary Results, the Department used a simple average of the publicly summarized version of the average value for B&H expenses reported in the U.S. sales listings in Essar Steel

³² We note that at the Preliminary Results we used Essar in our calculation of B&H. Record evidence indicates that the Essar B&H value was based upon net weight, thus, we have not used Essar in our calculation for B&H in these final results, consistent with our position in Comment 6, above. See Dongyun's January 16, 2007, surrogate value submission at Exhibit K.

Ltd.'s February 28, 2005, submission in the antidumping duty review of Certain Hot-Rolled Carbon Steel Flat Products from India ("Essar"), and the March 9, 2004, submission from Pidilite Industries Ltd. in the antidumping duty investigation of Carbazole Violet Pigment 23 from India ("Pidilite"). See Prelim Surrogate Value Memo at 8. GDLSK Respondents assert that because neither value is contemporaneous, the Department should use the contemporaneous data from three additional companies that GDLSK Respondents put on the record. See GDLSK Respondents' January 16, 2007, submission at Exhibit 3. GDLSK Respondents argue that the Department should follow precedent and disregard the non-contemporaneous data of Pidilite, Essar and Premier. See, i.e., Anshan Iron & Steel v. United States, Slip Op. 03-83 at 33 (July 16, 2003) (rejecting an argument to include less contemporaneous surrogate values and stating, "{t}his court has repeatedly recognized that Commerce's practice is to use surrogate prices from a period contemporaneous with the period of investigation."). GDLSK Respondents and Dongyun also contend that the Pidilite brokerage and handling value is aberrational. Thus, GDLSK Respondents and Dongyun assert that the Department should use the three contemporaneous brokerage and handling values on the record.

Petitioners argue that the Pidilite data is not significantly outdated nor aberrational. Petitioners argue that contemporaneity is only one criterion the Department will examine in selecting surrogate values. According to Petitioners, in past cases the Department has determined that specificity and/or representativeness are more critical than contemporaneity. Petitioners assert that the Courts have upheld the Department's right to judge differing factors when selecting surrogate values. See Hangzhou Spring Washer Co., Ltd. v. United States, Slip Op. 05-80 at 23-24 (July 6, 2005) ("since neither the statute nor the regulations speak to the issue of contemporaneity versus specificity, and case law had not delineated a bright line to rule on the matter, the Department has the statutory authority to give greater weight to one over the other").

Petitioners rebut the contention that Pidilite's data is aberrant because it represents an aggregate shipment volume of 13mt. Petitioners assert that a careful review of the container loads of the five new shipper review companies shows that their shipped container sizes are similar to those of Pidilite. Petitioners argue that because the Pidilite data is representative of Respondents' actual POR commercial activities in terms of economies of scale, the Department should include the Pidilite data in any calculation for the B&H surrogate value. Petitioners argue that the Agro Dutch data is based on a single sample calculation for only one sales observation of 13mt. According to Petitioners, it cannot be known how representative this single sample is of the B&H experience of Agro Dutch. Petitioners contend that the Kejriwal data consists of only 42.02 mt and only three brokerage charges and thus is nearly as unrepresentative as the Agro Dutch sample. Petitioners claim that the Department generally prefers broad categories of data over one sample source of data and thus, should not include Agro Dutch and Kejriwal in the B&H surrogate value. Therefore, Petitioners argue that the Department should value B&H by averaging the Pidilite, Essar, Premier and Navneet data as the most representative of the shipment sizes of the Respondents in the instant reviews.

Department's Position:

The Department has determined to rely on the B&H values from Agro Dutch and Kejirwal, and not to rely on the B&H value from Navneet, Essar and Pidilite. The Department's preference would be to use an Indian brokerage and handling value specific to garlic. However, as there is no acceptable B&H value that is specific to garlic B&H, the Department must evaluate the data without consideration of this factor to determine the best surrogate value. The Department finds, when considering the quality and specificity of the data on the record, that using a simple average of Agro Dutch and Kejirwal values achieves the most representative value. Using an average of these values represents the broad spectrum of values that are available for a wide range of products and minimizes the potential distortions that might arise from a single price source. Given that all B&H surrogate values on the record are from public versions of data submitted in other antidumping duty proceedings, we find that they are all equally publicly available. See Artist Canvas Comment 2.

In addition, the Agro Dutch and Kejirwal data are contemporaneous. Specifically, the Agro Dutch value corresponds to the 02/2004-01/2005 administrative review of the antidumping duty order on certain preserved mushrooms from India (*i.e.*, overlaps the POR by three months); and the Kejriwal values correspond to the 07/2004-06/2005 administrative review of the antidumping duty order on lined paper from India (*i.e.*, overlaps the POR by eight months).³³

We disagree with Petitioners that we should rely on Pidilite's B&H value in these final results because Pidilite's data is not contemporaneous. As Petitioners correctly pointed out, neither the statute nor the regulations speak to the issue of contemporaneity versus specificity, and case law has not delineated a bright line to rule on the matter. Therefore, 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 2005 Glycine Final at Comment 1. There is no hierarchy for applying the above-stated principles. In this case, Pidilite's B&H data corresponds to the 02-03 administrative review of the antidumping duty order on carbazole violet pigment 23, which is one to two years prior to the POR, whereas there are more contemporaneous sources available on the record. See GDLSK Respondents' January 16, 2007, submission at Exhibit III.

Regarding Navneet, a mandatory Respondent in the CLPP investigation, the Department concluded in the investigation that Navneet's information was not usable for the final determination and determined that the use of adverse facts available ("AFA") was appropriate for Navneet. See Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India, 71 FR 45012 (August 8, 2006) ("CLPP") at Comment 14. In CLPP, the Department stated that it was unable to adequately determine whether the cost information contained in Navneet's responses reasonably and accurately reflect the costs incurred by Navneet to produce the subject

³³ See GDLSK Respondents' January 16, 2007 submission at Exhibit III.

merchandise. Consequently, for this review, we have declined to consider Navneet's brokerage and handling data for use in these final results.

As stated above, there are B&H data available from two other companies which are publicly available, contemporaneous with the POR and are representative of a range of prices throughout the POR. Therefore, the Department has determined to rely only on the B&H data from Agro Dutch and Kejirwal in our calculation of the surrogate B&H expense because they represent the best available information on the record. See PSF at Comment 5.

Comment 8: Water Surrogate Value

Dongyun asserts that it placed information on the record from both the Indian and United States governments showing that farmers do not have to pay for water when wells are on their property. Therefore, Dongyun contends that the Department valued water at a value that does not reflect Dongyun's experience or comport with information on the record. Dongyun suggests that the Department should use a surrogate value of zero to value all its water expenses in this review.

Petitioners did not comment on this issue.

Department's Position:

At the outset, we note that, because the Department continues to apply the intermediate methodology (see Comment 1 above), the valuation of water used in the growing stage is not at issue because all costs, including water, are captured in the garlic bulb surrogate value used in our calculation of NV.

With respect to the valuation of water in the processing stage of garlic, we disagree with Dongyun that the water input should be valued at zero. As described below, we will continue to value water using data from the Maharashtra Industrial Development Corporation ("MIDC") (www.midcindia.org) using the industrial areas data categories as it fulfills our surrogate value selection criteria. See Policy Bulletin 04.1.

We agree with Dongyun that the information on the record indicates that both the Indian and U.S. governments allow farmers cost-free access to water from wells on property owned by the farmer. However, in China land is not owned by the garlic farmers or producers, but assigned by the government or otherwise rented. Furthermore, there is no evidence on the record that the value of well water is included in Dongyun's land rental expenses. Therefore, the Department must apply a separate value to water as water is a significant FOP, and to the extent the water is derived from wells on farmland, the water input used to process garlic should be valued at a rate larger than zero.

To the extent Dongyun is arguing that river water or other sources of water on, or off, rented lands in India are also accessible to Indian farmers to use water at no charge, it would be

inappropriate for the Department to use this value which is clearly not market based. It has been the Department's long-standing policy to avoid using the surrogate values which contain evidence of government intervention or which the Department has reason to believe or suspect may be dumped or subsidized. See e.g., Sebacic Acid at Comment 4. Thus, this zero rate would be an inappropriate surrogate value to apply in this case. Therefore, we have instead applied the industrial water rates data from MIDC in our calculations because there is no evidence that these values are unreasonably influenced by government beneficiary programs, are publicly available and there are a large number of data points covering this value on the record.

Comment 9: By-Product Offset

Dongyun argues that the record does not support the conclusion that the market value of the garlic bulb surrogate value already accounts for the experiences of the grower selling any by-products while growing garlic. Dongyun asserts that this decision is based on pure speculation and should be changed.

Petitioners contend that because the Department is using an intermediate methodology, the bulb price already includes any revenue offsets incurred by the surrogate price source. Petitioners state the Department previously determined that the surrogate value for the intermediate product represents the total value from the growing stage. See 10th Garlic Final at Comment 5. Petitioners assert that granting a by-product offset for garlic sprouts sold by Dongyun would double count any offsets accounted for in prices charged by the growers in the Azadpur data.

Department's Position:

As articulated in the 10th Garlic Final, we are not granting a by-product offset in our calculations of respondents' NV because the intermediate bulb price already includes any revenue offsets incurred by the surrogate price source. Because the by-product offset for sprouts is incurred at the growing stage and we are not using the respondents' reported growing FOPs to build a cost for the growing stage of garlic, we believe that the surrogate value 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. Put another way, if a grower sold sprouts for revenue, the ultimate bulb price would reflect this and if the grower did not sell sprouts for revenue, the bulb price offered would reflect this as well (i.e. a grower with a 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.

Comment 10: Application of Packing Materials in the Calculation of Normal Value

GDLSK Respondents argue that for Sunny, Trans-High, and Shanyang Freezing, the Department incorrectly treated certain packing FOPs as direct materials.³⁴ GDLSK Respondents note that, pursuant to section 773(b)(e)(1) of the Act, the Department has included certain materials normally classified as packing materials as direct materials if they were used in the processing of subject merchandise.

GDLSK Respondents state that the Department relies upon section 773(b)(e)(3) of the Act when classifying certain expenses as direct materials as opposed to packing materials, particularly when classifying some packing materials as direct materials when they are found to be more than incidental to placing the subject merchandise in condition packed ready for shipment. GDLSK Respondents contend that the Department should not include these materials as direct materials under sections 773(b)(e)(1)&(3) of the Act.

GDLSK Respondents argue that the record does not support that each Respondent used certain packing materials in the processing of garlic. Moreover, GDLSK Respondents contend that these materials were consumed after the peeling, washing, and drying stages. GDLSK Respondents assert that there is long-standing precedent to classify jars and lids as packing materials, and based on this precedent, the Department should value the materials to produce jars and lids as packing materials as well. See, i.e., Notice of Final Determination of Sales at Less Than Fair Value: Certain Ball Bearings and Parts Thereof From the People's Republic of China, 68 FR 10685 (March 6, 2003) at Comment 6.

GDLSK Respondents note that the Department classifies certain packing materials as direct materials if they are found to be an integral part of the subject merchandise. See Washington Red Raspberry Commission v. United States, 859 F.2d 898, 905 (CAFC 1998) (“Raspberries”) (“because without the pails and drums the raspberries could not exist in their natural form, the costs of the pails and drums must be included under {direct materials}.”). Contrary to Raspberries, GDLSK Respondents contend that garlic is packed in a variety of ways before shipment but that none are necessary for garlic to exist in its natural form. See Notice of Final Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China, 68 FR 27530 (May 20, 2003) at Comment 7 (the Department rejected Petitioners' argument that because saccharin cannot be sold without packing it should be included in direct materials). GDLSK Respondents also contend that the Department has examined this issue before and found that garlic packing materials should not be treated as direct materials. See Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review, 67 FR 72139 (December 4, 2002) (“December 2002 Garlic NSR”) at

³⁴ Sunny - plastic bags, jar/lid materials, and nitrogen gas; Trans-High - plastic bags; Shangyang Freezing - polyethylene, polyester, lid insert, direct labor - jar/lid making, indirect labor - jar/lid making, electricity - jar/lid making, plastic bag - jar/lid packing, and tape - jar/lid packing.

Comment 8 (the Department found that fresh garlic of any type, whether packaged in cartons or mesh bags, is subject to the antidumping order and therefore packing is not an integral part of fresh garlic). GDLSK Respondents also purport that garlic is distinct from mushrooms, where the cans are mentioned in the scope of the order and thus the container is an integral part of the product. See Notice of Final Determination of Sales at Less than Fair Value: Certain Preserved Mushrooms from the People's Republic of China, 63 FR 72255 (December 31, 1998) ("Mushrooms Investigation") at Comment 11. Thus, GDLSK Respondents assert that garlic is distinct from Raspberries and the Mushrooms Investigation and therefore packing materials should not be included as direct materials.

Petitioners rebut GDLSK Respondents' argument that it was inappropriate to treat packing materials such as plastic jars, lids, and plastic bags as direct materials. Petitioners note that Sunny stated that its peeled garlic is packed in plastic jars or bags which are then filled with nitrogen gas and vacuum sealed. Petitioners argue that this process is distinct from the way Sunny packages its fresh garlic, which does not involve vacuum sealing or the use of nitrogen gas. Thus, Petitioners assert that if glass jars and nitrogen gas were not essential to the production of peeled garlic, then Sunny would not incur these expenses.

Petitioners cite Chilean Salmon as support that the Department's treatment of certain packaging materials as direct materials is consistent with Department precedent. See Notice of Final Determination of Sales at Less than Fair Value: Fresh Atlantic Salmon from Chile, 63 FR 31411, 31415 (June 9, 1998) ("Chilean Salmon"). (The Department found that vacuum packing was not incidental to shipment and was instead an extra processing step that doubles the shelf life of fresh Atlantic salmon and thus packing was considered integral and appropriately included in the cost of manufacturing.). Petitioners challenge GDLSK Respondents' claim that the Department previously determined that garlic packing materials should not be treated as direct materials. Petitioners note that in the December 2002 Garlic NSR the Department found that packing materials for fresh garlic were not an integral part of the product. Petitioners contend that the use of nitrogen gas, plastic bags and jars and lids are integral to the production of peeled garlic and therefore cost is appropriately included among the costs of manufacturing rather than packing.

Department's Position:

The Department agrees with Petitioners. We find that treating packaging materials, associated with packing peeled garlic, as direct materials is consistent with Raspberries and Chilean Salmon. Specifically, we find that the packaging materials (i.e. jars, bags, and nitrogen gas) are an integral part of the peeled garlic. Specifically, the nitrogen gas used to pack the peeled garlic extends the shelf life of the product in the same way vacuum sealing extended the shelf life of salmon in Chilean Salmon. As noted in Chilean Salmon, when a product's shelf life is extended by the packaging, the product is transformed and thus the materials used in the process or direct materials. See Chilean Salmon, 63 FR at 31415. Therefore, we will continue treating packaging materials used in the production of peeled garlic as direct materials.

Comment 11: Shanyang Freezing's Surrogate Values for Polyethylene and Polyester

Shanyang Freezing argues that the Department incorrectly used the surrogate values for finished jars and lids to value the raw material FOPs used to produce lids and jars. Therefore, Shanyang Freezing asserts that the Department should use the surrogate values it placed on the record for valuing the raw material used to produce the jars and lids (polyester and polyethylene). See GDLSK Respondents' January 16, 2007, submission at Exhibit 2.

Petitioners did not comment on this issue.

Department's Position:

The Department agrees with Shanyang Freezing that it incorrectly valued the FOPs used to produce jars and lids with a surrogate value for finished jars and lids. Shanyang Freezing reported using polyester pellets to produce jars and polyethylene pellets to produce lids, which are used as packaging for subject merchandise. See Shanyang Freezing Section D Questionnaire response, dated April 20, 2006, at 15. For these final results, the Department will use WTA import data for HTS 3907 (polyether, expoxide, et) and HTS 3901 (ethylene, primary form) as this represents the best information available on the record of this proceeding. See Shanyang Freezing Supplemental Section D Questionnaire response, dated June 19, 2006 at Exhibit SD-5.

Comment 12: Dongyun's Section C Database

Dongyun argues that the Department did not use its most recent section C database in the margin calculation at the Preliminary Results.

Petitioners did not comment on this issue.

Department's Position:

We agree with Dongyun and will use the most current section C database for its final margin calculations.

Comment 13: Dongyun's Yield Loss

Dongyun states that it reported, in field 13.0 ("FRESH_GARLIC") of its section D database, the amount of fresh garlic consumed to produce finished garlic, starting at the planting stage. Dongyun contends that this variable contains Dongyun's yield loss from the farming through processing stages. Dongyun argues that, should the Department apply its intermediate input methodology in the final results, the Department should only use the yield loss incurred by Dongyun during the processing stages to calculate its NV.

Petitioners did not comment on this issue.

Department's Position:

We agree with Dongyun. As noted above in Comment 1, we are applying an intermediate input methodology in our calculation of NV for all Respondents. Accordingly, for the final results, we will only incorporate Dongyun's yield loss for its processing stages in our calculation of NV.

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 determination of this investigation and the final weighted-average dumping margins in the Federal Register.

AGREE _____

DISAGREE _____

David M. Spooner
Assistant Secretary
for Import Administration

Date _____