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New Shipper Review
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MEMORANDUM TO: Faryar Shirzad
Assistant Secretary
for Import Administration

FROM: Susan Kuhbach
Acting Deputy Assistant Secretary
AD/CVD Enforcement Group I

SUBJECT: Issues and Decision Memorandum for the New Shipper Review of
the Antidumping Duty Order on Fresh Garlic from the People's
Republic of China (PRC): November 1, 2000, through October 31,
2001

SUMMARY:

We have analyzed the briefs and rebuttal briefs of interested parties in the new shipper review of the antidumping duty order on fresh garlic from the People's Republic of China. As a result of our analysis, we have made changes from the preliminary results of this new shipper review. See Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review and Intent to Rescind in Part, 67 FR 49669 (July 31, 2002) (Preliminary Results). The specific calculation changes can be found in the Jinan Yipin Corporation, Ltd. (Jinan Yipin), final results analysis memorandum dated November 26, 2002 (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 new shipper review:

1. Unreviewable Sale
2. Jinan Yipin and American Yipin Affiliation

3. Bartered-Sprouts Valuation
4. Seed Valuation
5. Surrogate Financial Ratios
6. Electricity Valuation
7. Treatment of Water as a Direct Material
8. Inclusion of Packing Materials and Packing Labor as a Part of Direct Materials
9. Carton Valuation
10. Fertilizer Valuation

DISCUSSION OF THE ISSUES

I. Changes from the Preliminary Results

Based on the results of verification and the comments we received from interested parties, we have made revisions to the data used for the final results. For further details, please see the final results analysis memorandum for Jinan Yipin dated November 26, 2002, which is on file in room B-099 of the Central Records Unit at the Department of Commerce. These revisions are as follows:

1. We incorporated the pre-verification corrections as submitted at the start of the U.S. sales and factor of production verifications.
2. We calculated average surrogate percentages for factory-overhead, selling, general, and administrative (SG&A) expenses, and profit using the 2000-2001 financial reports of Agro Dutch Foods Ltd. (Agro Dutch), Flex Foods Ltd. (Flex Foods), and Himalya International Ltd. (Himalya). We also deducted the line item "Selling & Administrative Expenses – USA office" from the financial statements to avoid double-counting U.S. indirect selling

expenses.

3. We deducted a portion of building depreciation from the factory overhead equal to the portion of the lease agreement pertinent to bartered garlic sprouts.
4. We valued garlic seed using prices for Indian varieties of garlic, i.e., Yamuna Safed-2 and Agrifound Parvati.
5. We removed packing materials and packing labor from the direct-materials cost calculation.
6. We treated water as a variable overhead expense rather than a direct-material expense.

II. Issues

Comment 1. Unreviewable Sale: The petitioners, the Fresh Garlic Producers Association and its individual members (FGPA), assert that the Department of Commerce (the Department) improperly calculated a company-specific dumping margin for Jinan Yipin in the Preliminary Results because the record before the Department contains information indicating that the single sale at issue in this proceeding is not a reviewable transaction.

According to FGPA, information on the record suggests that Jinan Yipin's alleged U.S. customer was affiliated because it had acted as a broker for Jinan Yipin's U.S. affiliate, American Yipin. As such, FGPA argues, any transaction between those two companies does not represent a sale that is reviewable by the Department for purposes of assigning a company-specific dumping margin to Jinan Yipin.

FGPA contends further that the record indicates that the alleged U.S. customer paid a price for the subject merchandise that is significantly higher than the prevailing prices at which Chinese producers/exporters sold or offered fresh garlic for sale in third-country markets and the United

States at or around the time of the sale at issue. According to FGPA, the unreasonably high price of the subject merchandise in the sale at issue is reflected by information on the record indicating that the average unit value (AUV) of all fresh garlic from the People's Republic of China (PRC) in 2001 was \$0.17 per pound. Citing price quotations placed on the record, FGPA asserts that fresh Chinese garlic was readily available in the United States at a price similar to the AUV of the PRC's fresh garlic exports to third-country markets in 2001 and at a fraction of the price paid by American Yipin's U.S. customer. FGPA thus argues that this significant discrepancy demonstrates that the transaction at issue does not constitute a bona fide transaction, but rather a carefully arranged transaction to thwart the application of the U.S. antidumping laws.

Citing Fresh Garlic From the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review, 67 FR 11283 (March 13, 2002), and accompanying Issues and Decision Memorandum (Fresh Garlic Rescission), FGPA argues that the Department has determined that, based on similar pricing discrepancies, certain transactions did not constitute bona fide sales. Therefore, FGPA asserts, given the absence of any reasonable explanation for the alleged U.S. customer's taking possession of the fresh garlic at issue at a price significantly higher than the prevailing price for fresh garlic exported to third-country markets, the Department should reject the reported U.S. sale and assign to Jinan Yipin, on the basis of facts available, the PRC-wide rate of 376.67 percent ad valorem.

Jinan Yipin asserts that there is no information on the record that lends credence to FGPA's allegations. Jinan Yipin states that American Yipin's U.S. customer has never acted as a broker for American Yipin and that the companies are not affiliated in any manner. Furthermore, according to Jinan Yipin, the Department verified every aspect of the transaction between

American Yipin and its U.S. customer and there was not the slightest indication that the U.S. customer was anything other than an unaffiliated customer which purchased garlic from American Yipin and paid for the merchandise in full.

Jinan Yipin argues that FGPA has relied on hearsay as a basis for its allegations. Further, Jinan Yipin contends, despite FGPA's meticulous research of every aspect of American Yipin's existence, it has found nothing to corroborate the allegations. Thus, Jinan Yipin asserts, FGPA's contention that American Yipin has not made a reviewable sale remains unfounded.

Jinan Yipin also rebuts FGPA's accusation that the U.S. sale at issue was made at an unreasonably high price. Jinan Yipin disputes FGPA's assertion concerning the AUV of \$0.17 per pound, arguing that this figure reflects prices which are FOB China and not actual average prices for fresh Chinese garlic imports into the United States in 2001. Citing the Fresh Garlic Rescission, Jinan Yipin contends that the Department has determined that FOB China prices cannot be fairly compared to resale prices in the U.S. market. Furthermore, Jinan Yipin asserts, based on other price information on the record which indicates the average value for fresh garlic imports to the United States during 2001, it is clear that Jinan Yipin's U.S. prices are not unreasonably high. Jinan Yipin concludes that FGPA's allegation is based on misleading price comparisons and should thus be disregarded by the Department.

Department's Position: After considering all of the information on the record of this review, we find that there is insufficient evidence demonstrating that the sale between American Yipin and its U.S. customer is an unreviewable sale. This decision reflects a careful and thorough examination of the totality of the circumstances surrounding the transaction between the respondent's U.S. affiliate and its U.S. customer.

In general, the Department is bringing additional scrutiny to various issues in new shipper reviews, including the question of whether reported sales are in fact *bona fide* commercial transactions. In conducting this review, the Department examined all of the facts associated with the reported transaction carefully, including the size of the sale and whether the sale occurred as reported, to ensure that the reported transaction was a *bona fide* sale. This examination included verification of the information concerning American Yipin in Houston, Texas, and travel to the PRC to verify the information Jinan Yipin had presented in its questionnaire responses. Both verifications entailed a comprehensive examination of the entity's expense, production, and sales records with respect to the garlic Jinan Yipin exported to the United States. Based on our careful examination of the facts, we are satisfied that the sale between American Yipin and its U.S. customer is a *bona fide* commercial transaction and a reviewable sale.

First, there is no evidence on the record to indicate that the U.S. customer acted as a broker for American Yipin in the transaction at issue. On the contrary, at verification, we were able to trace the sale at issue to source documentation and verified that payment for the merchandise was indeed received from the U.S. customer and that no subsequent disbursements or refunds had been made to the reported customer. See Memorandum to the File titled "U.S. Market Verification of the Response of Jinan Yipin Corporation, Ltd., to the Questionnaire of the New Shipper Review (11/01/00-10/31/01) of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China" dated October 16, 2002 at page 6.

We also disagree with FGPA's assertion that the price American Yipin's U.S. customer paid is significantly higher than the prevailing prices for fresh Chinese garlic. As Jinan Yipin observed, the AUV data cited by FGPA to support its argument is FOB China, an earlier point in

the channel of distribution than the sale from American Yipin to its U.S. customer and, thus, the two figures are not comparable. We also find that the price American Yipin's U.S. customer paid is not unreasonably different from the AUV for imports of subject merchandise in 2001. See the Final Results Analysis Memorandum for Jinan Yipin from Jennifer Moats to the File, dated November 26, 2002. For the reasons outlined above, we conclude that the transaction at issue is a reviewable U.S. sale.

Comment 2: Jinan Yipin and American Yipin Affiliation: FGPA argues that the Department's decision to base its U.S. price analysis on the transaction between American Yipin and its U.S. customer is flawed because it assumes wrongly that the sale between Jinan Yipin and American Yipin was merely a transfer between affiliated companies. Instead, FGPA contends, the record before the Department does not demonstrate the existence of an affiliation between Jinan Yipin and American Yipin that falls within the definition of affiliated persons in section 771(33) of the Tariff Act of 1930 (the Act).

According to FGPA, the language in section 771(33)(F) of the Act, as explained in detail in the Statement of Administrative Action, URAA, H. Doc. 103 - 316, (1994) (SAA), at 838-839, provides that, in order for two or more parties to be "affiliated," the relevant company must have the ability to exercise control rather than the actuality of control over specific decisions. FGPA asserts that information on the record pertaining to stock ownership of Jinan Yipin and American Yipin does not satisfy the statutory definition of affiliated persons. Citing Certain Cut-to-Length Carbon Steel Plate From Brazil: Final Results of Antidumping Duty Administrative Review, 62 FR 18486 (April 15, 1997), FGPA argues that the Department must base its findings of control on several factors, not merely the level of stock ownership. The Department should only find that one

party has the capacity to control another if one person has the ability or potential to affect decisions concerning the production, pricing, or cost of the subject merchandise by another person and that, without the existence of majority stock ownership in both parties, one party cannot exercise control over another. Thus, FGPA asserts, because common shareholders between Jinan Yipin and American Yipin do not hold a majority of the stock in both companies, Jinan Yipin cannot exercise control over American Yipin. Therefore, FGPA contends, there is no basis for finding the two parties to be affiliated within the meaning of section 771(33) of the Act and, based on the absence of an affiliation, the Department must deem the sale between Jinan Yipin and American Yipin as an arm's-length, export-price sale between unaffiliated parties.

In addition, FGPA asserts that the Department's verification of American Yipin's U.S. sales process revealed that Jinan Yipin has no involvement whatsoever in those activities, thereby confirming the absence of an affiliation or controlling relationship between Jinan Yipin and American Yipin. FGPA asserts further that at verification the Department found that the sale of subject merchandise between Jinan Yipin and American Yipin was completed prior to American Yipin's finalizing the sales arrangements with its alleged U.S. customer, thus indicating that American Yipin was acting independently from Jinan Yipin. Moreover, FGPA argues that Jinan Yipin not only was uninvolved in American Yipin's sale and marketing of the subject merchandise during the POR, but also that it had no involvement in American Yipin's sales of non-subject merchandise. Citing Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils From Germany, 64 FR 30710 (June 8, 1999), FGPA asserts that the Department has found companies to be affiliated when the parent company plays a significant role in its affiliate's operations and management and exercises direction or restraint over its affiliate's

production, pricing, and other business activities. According to FGPA, such a relationship does not exist between Jinan Yipin and American Yipin. Thus, FGPA concludes that, based on the lack of evidence on the record demonstrating an affiliation between Jinan Yipin and American Yipin, the Department should treat the transaction between Jinan Yipin and American Yipin as an export-price sale and should calculate the dumping margin accordingly.

Jinan Yipin refutes FGPA's argument that Jinan Yipin and American Yipin should not be considered "affiliates" within the meaning of the statute or the Department's regulations. Jinan Yipin asserts that, based on the established policies regarding affiliated parties, the record in this case demonstrates that the two parties are affiliated. Jinan Yipin contends that record evidence demonstrates that American Yipin was established in order to help Jinan Yipin gain a presence in the U.S. market and that the Department confirmed at verification that Jinan Yipin has only sold subject merchandise in the United States through American Yipin and, similarly, American Yipin has only sold garlic in the United States that it obtained from Jinan Yipin.

Jinan Yipin rebuts FGPA's assertion that, since common shareholders between Jinan Yipin and American Yipin do not hold a majority of the stock in both companies, Jinan Yipin does not exercise control over American Yipin. According to Jinan Yipin, "control" to establish affiliation under section 771(33)(F) of the Act merely requires the ability or potential to exercise control over another person. Citing Ferro Union v. United States, 44 F. Supp. 2d 1310, 1324 (CIT 1999) (Ferro Union), and the SAA at 838, Jinan Yipin contends that more than one shareholder can be deemed to control a company because the potential to control a company does not require a majority interest. Citing Ferro Union further, Jinan Yipin states that this definition of control permits a finding that several persons or groups are in a position to exercise restraint or direction over a

company. Therefore, Jinan Yipin asserts, contrary to FGPA's argument, the record does establish that the division of both companies' stock ownership provides the potential for control to be exercised by a party over both Jinan Yipin and American Yipin.

Accordingly, Jinan Yipin argues that an affiliation, as defined by section 771(33) of the Act, exists between Jinan Yipin and American Yipin and, thus, the Department should continue to base its analysis on the constructed export price (CEP) of the transaction between American Yipin and its U.S. customer.

Department's Position: We find that basing our analysis on the CEP of the transaction continues to be the most appropriate method under which to calculate the antidumping duty margin for Jinan Yipin. Section 771(33)(E) of the Act defines "affiliated persons" as "any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding stock or shares of any organization and such organization." The record demonstrates that, based on a clear reading of this statutory provision alone, Jinan Yipin and American Yipin are affiliated. In addition, we found no evidence at verification which suggests that Jinan Yipin and American Yipin are not affiliated. Therefore, for U.S. price we examined the sale by American Yipin to the unaffiliated U.S. customer and performed a CEP analysis.

Comment 3: Bartered Sprouts Valuation: FGPA alleges that the Department improperly accounted for Jinan Yipin's bartering of garlic sprouts by deducting all building depreciation from the calculation of the surrogate factory-overhead ratio. FGPA asserts that, because the garlic sprouts were used to pay for only a portion of its lease, the Department should value garlic by subtracting a portion of building depreciation, equal to the portion of the lease agreement pertinent to bartered sprouts, from the surrogate factory-overhead ratio.

FGPA contends that the Department's methodology in the Preliminary Results significantly overvalues the garlic sprouts bartered by Jinan Yipin during the period of review (POR) because it eliminates all building depreciation from the calculation of the surrogate factory-overhead ratio. FGPA contends that the Department's calculation improperly assumes that Jinan Yipin paid for its entire lease with garlic sprouts. Rather, FGPA asserts, the language of the lease agreement makes clear that the garlic sprouts were not a principal element of Jinan Yipin's payment to rent the land. FGPA also cites the lease signed by Jinan Yipin for the 2001-2002 garlic growing season in support of its assertion that the garlic sprouts are not a principal element of the rent payment.

FGPA suggests that the Department should value garlic sprouts by subtracting a portion of building depreciation, equal to the portion of the lease agreement pertinent to bartered sprouts, from the surrogate factory-overhead ratio. FGPA asserts, however, that Jinan Yipin declined to place such information on the record and claims that the verification did not establish the portion of Jinan Yipin's lease expense for which the bartered garlic sprouts accounted. In addition, FGPA argues that, since the Department sought the information necessary to make such an adjustment for the Preliminary Results and Jinan Yipin refused to provide it, the Department should not make any by-product offset for the bartered garlic in the final results.

Jinan Yipin argues that there is no basis in the statute or in past practice for the Department to value a by-product with a wholly unrelated adjustment to the surrogate financial ratios. Citing Honey from the People's Republic of China, Notice of Final Determination of Sales at Less Than Fair Value, 66 FR 50608 (Oct. 4, 2001) (Honey), Jinan Yipin asserts that, even when by-products have been bartered, the Department assigned a surrogate value from a market economy for a comparable product. Furthermore, Jinan Yipin states that the Department's policy in the

Preliminary Results is inconsistent with its actions in the ongoing administrative review of garlic from the PRC, citing Memorandum from Edythe Artman and Jason Carver to the File titled “Factors Valuation for the Preliminary Results” dated August 2, 2002, in the 2000/2001 administrative review of the antidumping duty order on fresh garlic from the PRC. Jinan Yipin asserts that in the administrative review the Department valued a respondent’s garlic sprouts using the same surrogate value it applied to the garlic cloves.

Accordingly, Jinan Yipin suggests that, if the Department cannot find a more comparable surrogate value for garlic sprouts, it should apply the same value to Jinan Yipin’s garlic sprouts as used for garlic seed or explain why it is adopting inconsistent policy.

Department’s Position: It is appropriate to value the garlic sprouts that Jinan Yipin used as a partial payment on the lease of the land by reducing the surrogate factory-overhead ratio by a portion of the building depreciation equal to the portion of the lease for which Jinan Yipin paid with bartered garlic sprouts.

In non-market-economy reviews, we normally attempt to assign a surrogate value from a market economy for a comparable product to the bartered item. See 19 CFR 351.408(c)(1). In this new shipper review, the Department was unable to find a surrogate value for garlic sprouts from a market economy.

In the ongoing administrative review, the Department valued a respondent’s garlic sprouts using the same surrogate value applied to the garlic cloves because the sprouts were sold for currency rather than bartered. The garlic sprouts under consideration in this new shipper review were bartered as a partial payment for a lease. In this situation, because of information obtained at verification, we are able to reflect the value of the bartered sprouts as a reduction in factory

overhead. Lacking a surrogate value for the product that is actually bartered, we believe this offset methodology best reflects Jinan Yipin's factors of production.

In the Preliminary Results, we valued the garlic sprouts by reducing the surrogate factory-overhead ratio by the entire amount for building depreciation found on the financial statements for Agro Dutch, Flex Foods, and Himalya. At that time, there was no information on the record to calculate the portion of the lease for which Jinan Yipin paid by using bartered garlic sprouts.

Since the Preliminary Results, we have placed a lease agreement on the record which does not include the bartering of garlic sprouts as a portion of the payment. Consequently, we are able to calculate the portion of the lease for which Jinan Yipin paid using sprouts. See Analysis Memo.

Comment 4: Seed Valuation: FGPA alleges that the Department inappropriately relied on Indian import statistics reported in the Monthly Statistics of Foreign Trade of India (MFSTI) to value garlic seed. It asserts that the MFSTI data is a poor surrogate for the garlic seed Jinan Yipin used based on the nature of specialized garlic seed Jinan Yipin advertised on its website and the possibility that the Indian import statistics reflect transshipments of Chinese garlic.

FGPA claims that Jinan Yipin has misrepresented the quality of the garlic seed that it uses in its production of garlic. FGPA contends that information on Jinan Yipin's website indicates not only that Jinan Yipin produces export-quality garlic but also that it has a specialized research and development program with the objective of producing high-quality seed for garlic production. In addition, FGPA contends that Jinan Yipin's assertions concerning the quality of its seed are contradicted by traditional industry growing procedures. Consequently, FGPA argues, Jinan Yipin's misrepresentation should result in the Department's application of total adverse facts available with respect to Jinan Yipin in its final results. Alternatively, FGPA suggests that the

Department should, at a minimum, rely on the information for the specially developed Yamuna Safed and Agrifound Parvati garlic seed varieties.

FGPA also argues that the Department cannot rely upon data concerning Indian imports of fresh garlic as a surrogate value. FGPA claims that, because India's imports of fresh garlic allegedly originating in Malaysia and Hong Kong are garlic produced in China that was transshipped to India, the data is inappropriate for use as a surrogate value. In the case of garlic transshipped through Malaysia, FGPA reports that the United Nations Food and Agriculture Organization maintains a database reporting country-specific agricultural statistics, including garlic production. FGPA contends that this database indicates that there was no garlic production in Malaysia between 1999 and 2001. In addition, FGPA cites a 1994 report by the International Society for Horticultural Science which states that "{a}ttempts at growing garlic {in Malaysia} were not successful as no bulbs were obtained though vegetative growth was good." FGPA claims that, because Chinese exports of fresh garlic to Malaysia increased more than 15-fold during the last four years and Malaysian per-capita consumption of garlic fell, fresh garlic produced in China and exported to Malaysia is being repackaged and transshipped to third-countries, including India.

In the case of garlic being transshipped through Hong Kong, FGPA states that fresh garlic is not produced in Hong Kong. Due to Hong Kong's tiny land mass, the fact that even smaller portions of land are being dedicated to agricultural crops and Hong Kong's proximity to mainland China, FGPA claims it that it is unlikely that the 29,000 kilograms of garlic that were exported from Hong Kong to India were actually produced in this territory. Again, FGPA argues that increases in imports coupled with a per-capita decrease in garlic consumption leads it to believe

that, like Malaysia, the import data submitted by Jinan Yipin reflects fresh garlic produced in China that was transshipped through Hong Kong.

FGPA also asserts that the Department should reject Jinan Yipin's proposal to value garlic seed based on purchases of garlic by Flex Foods. FGPA indicates that Flex Foods' active involvement in the production of freeze-dried vegetables indicates that the garlic purchased by the company was low-quality bulbs which have none of the characteristics possessed by garlic bulbs sold in the fresh market. FGPA also asserts that Jinan Yipin provides no information concerning the quality, specificity, or contemporaneity of the data in Flex Foods' 2000-2001 financial statement.

Jinan Yipin asserts that the type of garlic used by Flex Foods is highly comparable to the seed garlic it uses to produce fresh garlic. In addition, Jinan Yipin argues that the factors-of-production calculation in this case requires a surrogate value for seed garlic rather than the whole garlic bulbs sold to the United States. Jinan Yipin states that it does not participate in any type of scientific process to specially engineer its garlic seed.

Jinan Yipin also asserts that FGPA's argument about the possibility of transshipped garlic is flawed. Jinan Yipin suggests that the best surrogate-value information on the record is the purchase of garlic detailed in the Flex Foods financial statement. Jinan Yipin contends that, if the Department decides not to rely on the pricing data available in the Flex Foods financial statement the next best alternative is the data obtained from Indian import statistics upon which the Department relied in the Preliminary Results.

Department's Position: We agree with FGPA and have determined that the most appropriate surrogate-value information for Jinan Yipin's garlic seed are the prices for the two

Indian varieties (i.e., Yamuna Safed and Agrifound Parvati).

We have determined that it is inappropriate to value garlic seed using information from the Flex Foods financial statements. Flex Foods is involved with the production of freeze-dried vegetables; therefore, the seed purchased by Flex Foods is likely to be of low-quality bulbs which are not comparable to seed used in the production of fresh garlic.

In the Preliminary Results, we used data from Indian import statistics. Since the Preliminary Results, we have verified Jinan Yipin's response. During verification, Jinan Yipin showed us garlic that it claimed it was saving as seed garlic for the next year's crop of garlic. Jinan Yipin also told us that it does not place the garlic cloves that are to be used as seed in cold-storage facilities because that would ruin the seed. We were not able to actually verify Jinan Yipin's claims, however. Moreover, the claims Jinan Yipin made regarding the garlic it uses as seed differ substantially from the practices we saw at both U.S. garlic producers and other Chinese garlic producers.

We have record information from multiple sources which indicates that large healthy garlic bulbs must be used in order to produce a healthy crop of garlic. These sources also indicate the necessity of keeping the garlic that is being used for seed at a regulated temperature either through means of cold-storage facilities or an alternative measure to regulate the inside temperature of the garlic. See memorandum to the file from the team titled "Tour of U.S. Production Operations," dated September 10, 2002; memorandum to Laurie Parkhill from Edythe Artman, Jennifer Moats, and Brian Ellman titled, "Verification of the Responses of Taian Fook Huat Tong Kee, Ltd., to the Questionnaires in the Administrative Review (11/01/00-10/31/01) of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China," dated November 5, 2002; FGPA's August

20, 2002, submission at Exhibit A. Jinan Yipin's claims run contrary to this information.

In addition, Jinan Yipin's website states that it participates in scientific development of its garlic seed. Jinan Yipin claimed at verification and in its case and rebuttal briefs that it does not participate in any scientific development of garlic seed. Jinan Yipin offered only at the hearing an explanation that the "scientific development discussed in the website was forthcoming" and meant to apply in the future.

Nevertheless, we find that the use of total adverse facts available as suggested by the petitioner is not warranted. Section 776(a) of the Act provides for the use of facts available when information is not available. Section 776(b) allows the Department to apply an adverse inference when it determines a respondent has not cooperated to the best of its ability in a proceeding. We were able to verify all the other data at verification, except the valuation for seed. We find Jinan Yipin did not cooperate to the best of its ability in supplying this information, but it did cooperate in all other aspects of the review. Thus, it is appropriate to rely on partial adverse facts available as outlined in section 776(b) of the Act and not total adverse facts available. The information on the record regarding the typical methods for the production of garlic and the publicly available information on Jinan Yipin's website indicate that Jinan Yipin uses specialty garlic seed in its production of garlic. Consequently, we have determined to value garlic seed with the information on the two Indian varieties of specialty garlic in the calculation of the final results.

In addition, we find that the Indian import statistics, which we used in the Preliminary Results, could include garlic from varying qualities and categories which are not representative of the specialty or high-quality seed needed in the production of export-quality fresh garlic. Therefore, because price information for the specialty garlic is a more appropriate surrogate value

than the Indian import statistics we used in the Preliminary Results, FGPA's concerns about the use of the Indian import statistics are moot.

Comment 5: Surrogate Financial Ratios: FGPA asserts that the Department should continue to calculate surrogate financial ratios based on the financial statements of three Indian mushroom producers—Flex Foods, Agro Dutch and Himalya—on which the Department relied in the Preliminary Results, but it should use the companies' 2000-2001 updated financial statements which are on the record for purposes of calculating factory overhead, SG&A, and profit ratios for the final results.

Citing Certain Preserved Mushrooms From the People's Republic of China: Final Results of Third New Shipper Review and Final Results and Partial Rescission of Second Antidumping Duty Administrative Review, 67 FR 46173 (July 12, 2002), and accompanying Issues and Decisions Memorandum (Mushrooms from the PRC), FGPA argues that the Department has recently used the 2000-2001 financial statements of Agro Dutch and Flex Foods to calculate factory overhead, SG&A, and profit ratios. Although the 2000-2001 financial statement for Himalya was not available for use in Mushrooms from the PRC, FGPA contends that the Department should incorporate the calculated financial ratios based on Himalya's 2000-2001 financial statement that it has provided.

Furthermore, FGPA maintains that Jinan Yipin's initial suggestion that surrogate financial ratios be calculated based on general financial information published by the Reserve Bank of India (RBI) for the period from 1990-1993 was properly rejected by the Department in the Preliminary Results. FGPA asserts that the RBI data neither accurately reflects the financial situation of producers of the subject merchandise nor is it contemporaneous with the POR. According to

FGPA, RBI data could include other totally unrelated agricultural activities such as raising livestock or aquaculture farming, which differ markedly from the activities related to the production of fresh garlic. FGPA asserts, however, that the processes involved in producing certain preserved mushrooms from the PRC are similar to those used to produce garlic, as they are both agricultural products with similar factors of production and, as both are exported to the United States, they are both subject to the costs associated with meeting strict U.S. health and food standards.

Jinan Yipin argues that the Department should disregard the 2000-2001 Himalya financial statement because it constitutes factual information that was not submitted within the explicit time limits contained in the Department's regulations. According to Jinan Yipin, section 351.301(c)(3)(ii) of the regulations establishes a very precise deadline for the submission of new factual information to value factors of production in a new shipper review, *i.e.*, twenty days after the date of publication of the preliminary results of review. Because FGPA submitted additional surrogate information, including Himalya's 2000-2001 financial statement, after the deadline, citing 19 CFR 351.302(d) and section 782(g) of the Act, Jinan Yipin argues that the Department should disregard the Himalya 2000-2001 financial statement.

Jinan Yipin also rebuts FGPA's claim that its submission was timely because 19 CFR 351.301(c)(1) provides ten days for rebuttal, clarification, or correction after a factual submission is served. According to Jinan Yipin, FGPA stated that it submitted the new Himalya financial statement in order to supplement the administrative record and to provide additional contemporaneous data, not to rebut, clarify, or correct factual information on the record. Jinan Yipin asserts that the Himalya financial statement does not qualify as information that could

properly be submitted pursuant to 19 CFR 351.301(c)(1) and should thus be disregarded.

Furthermore, Jinan Yipin asserts that the Himalya financial statement should be disregarded because the financial ratios it contains are aberrational. According to Jinan Yipin, Himalya's SG&A ratio is over seven times larger than the SG&A ratio for the other two companies on the record. Jinan Yipin argues that, since the administrative record already contains the contemporaneous financial statements from Flex Foods and Agro Dutch, there is no need for additional SG&A surrogate information. Moreover, Jinan Yipin asserts that there is no credible evidence that additional financial information from a third preserved-mushroom producer would make the resulting financial ratios any more accurate as a surrogate for a Chinese garlic producer. Therefore, Jinan Yipin maintains, the Department should disregard the 2000-2001 financial statement for Himalya as an unrepresentative and aberrational surrogate value and calculate surrogate ratios using the other two contemporaneous financial statements that were placed on the record in a timely fashion.

In addition, Jinan Yipin asserts that, if the Department decides to use the 2000-2001 financial statement for Himalya, it must ensure that the ratios are calculated in a correct and lawful manner. According to Jinan Yipin, the calculation of proposed financial ratios provided by FGPA contains significant errors. First, Jinan Yipin contends that a substantial portion of the SG&A expenses in FGPA's calculation is derived from Himalya's "Selling & Administrative Expenses – USA office" category. Jinan Yipin states that, because it reported an indirect selling expense ratio for American Yipin, its U.S. affiliate, and because the Department verified that the expenses and sales Jinan Yipin used to calculate this ratio include an amount for Himalya's USA office selling expenses, use of this amount would result in double-counting certain expenses.

In addition, Jinan Yipin argues that FGPA's SG&A calculation for Himalya includes an amount for "Infotech Division Expenses," although there is no indication in the Himalya financial statement that these expenses are SG&A costs. In fact, Jinan Yipin asserts, the financial statement specifically excludes these costs from its schedule of selling and administrative expenses. Further, Jinan Yipin contends that a massive increase in the amount for Infotech expenses from 2000 to 2001 suggests that this expense includes considerable amounts for write-offs, capital expenditures, or other costs that are not properly included in SG&A. Thus, Jinan Yipin concludes, there is no justification for including the full amount of expenses attributed to the Infotech Division in the SG&A calculation.

Jinan Yipin also argues that the Infotech Division is a subsidiary company devoted entirely to providing consulting services to U.S. information-technology companies regarding building and hosting websites and maintaining servers. Jinan Yipin asserts that any inclusion of its expenses in an SG&A ratio would stretch beyond the limit of "comparable merchandise," as required pursuant to 19 CFR 351.408(c)(4), and would not be appropriate as a surrogate for a garlic producer. Accordingly, Jinan Yipin concludes, should the Department decide to use the 2000-2001 Himalya financial statement, it should recalculate the SG&A by removing the "Selling & Administrative Expenses – USA office" and "Infotech Division Expenses" from the calculation.

FGPA rebuts Jinan Yipin's argument that Himalya's 2000-2001 financial statement was untimely filed on the record after the deadline for submission of factual information, asserting that the deadline established in 19 CFR 351.301(c)(3)(ii) does not preclude the subsequent submission of factual information that rebuts, clarifies, or corrects factual information submitted by another party under 19 CFR 351.301(c)(1). FGPA argues that its submission of the 2000-2001 Himalya

financial statement clarifies the most recent financial returns reported by a company that the Department used as a surrogate in its Preliminary Results and also clarifies the full range of financial returns earned by Indian producers of certain preserved mushrooms during the relevant period. Thus, FGPA asserts that the Department should reject Jinan Yipin's assertion that the submission of Himalya's 2000-2001 financial statement constitutes the untimely submission of new factual information.

Additionally, FGPA argues that Jinan Yipin's contention that the financial ratios contained within Himalya's 2000-2001 financial statement are aberrational is baseless. According to FGPA, while the SG&A ratio for Himalya, as reflected by its 2000-2001 financial statement does exceed the ratios for Flex Foods and Agro Dutch, there is no record evidence which establishes that the figure is aberrational. FGPA asserts further that, although Himalya's 2000-2001 financial statement yields a higher SG&A ratio than its 1999-2000 financial statement, the SG&A ratios for Flex Foods and Agro Dutch declined over the same comparison period. Thus, FGPA argues, the variation among the companies' financial results provides all the more reason for the Department to rely on the financial statements of more, rather than fewer, companies in calculating surrogate financial ratios, as it will necessarily provide a more complete perspective of the financial returns of the Indian preserved-mushroom industry and result in the calculation of appropriate surrogates for Jinan Yipin's financial ratios.

Furthermore, FGPA argues that, despite Jinan Yipin's claims to the contrary, the Department found at its verification of Himalya in Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review, 66 FR 42507 (August 13, 2001), and accompanying Issues and Decision Memorandum (Mushrooms from India) that Infotech

Division's operations are related to the sale of agricultural products by Himalya. According to FGPA, this finding was among those that led the Department to conclude that Himalya's Infotech Division expenses must be included in the calculation of the SG&A expenses.

FGPA also argues that Jinan Yipin's contention that an increase in expenses for the Infotech Division provides support for excluding them from the Department's SG&A calculation should be rejected. According to FGPA, if the type of accounting procedure alleged by Jinan Yipin had been followed, it would appear in the notes to the accounts provided by Himalya's auditors. However, FGPA asserts, no such evidence exists. Thus FGPA concludes, because all selling and administrative expenses must be included in Himalya's SG&A ratio, the Department should include this expense in its calculation of a surrogate SG&A expense ratio for Jinan Yipin in the final results of this new shipper review.

Department's Position: We find that, in order to calculate the most appropriate surrogate ratios for factory overhead, SG&A, and profit, we should base our ratio calculation on the 2000-2001 financial statements for Agro Dutch, Flex Foods, and Himalya.

We find that the 2000-2001 financial statement for Himalya was submitted properly for the record. We based our Preliminary Results on the financial statement for Himalya and, therefore, we do not consider Himalya's 2000-2001 financial statement to be new information. FGPA merely submitted an updated financial statement that is more contemporaneous with the POR. In addition, Himalya's financial statements are available publicly. We find the more contemporaneous financial statement a better source for our surrogate ratios.

In addition, use of three financial statements is a more accurate portrayal of the economic spectrum than limiting our reliance on two financial statements. For the Preliminary Results, we

used all three companies' financial statements to calculate surrogate ratios more accurately. The same logic still applies. Although Jinan Yipin asserts that the use of the more contemporaneous Himalya financial statement will not create a more accurate surrogate-value ratio, it provided no evidence that its exclusion would create more accurate results. The only support Jinan Yipin provided for its argument is speculation that Himalya's financial statement is aberrational. Because Jinan Yipin did not provide evidence demonstrating that the data in the 2000-2001 Himalya financial statement is aberrational, we used it in the calculation of surrogate financial ratios for the final results of review.

We removed the line item "Selling & Administrative Expenses – USA office" from our calculation of the SG&A ratio to avoid double-counting U.S. indirect selling expenses. Because we deducted American Yipin's actual U.S. indirect selling expenses from the CEP, it would be inappropriate to include surrogate expenses for a U.S. office in the SG&A ratio.

Finally, we have included the line item "Infotech Division Expenses" in our calculation of the surrogate SG&A ratio. They are an expense that relates to multiple food products, not solely to mushrooms. See Mushrooms from India at Comment 17. Therefore, it is appropriate to include these in our calculation of SG&A expenses as they are general and administrative expenses incurred by a producer of comparable merchandise. See 19 CFR 351.408(c)(4).

Comment 6: Electricity Valuation: Jinan Yipin argues that the Department should value electricity using electricity rates for agricultural uses published by the Teri Energy Data Directory and Yearbook 1999/2000 (Teri). Jinan Yipin states that, because these electricity rates are for agricultural uses, they are more representative of the electricity rates used by garlic farmers in China. In addition, Jinan Yipin states that the Teri data is more contemporaneous than the

International Energy Agency (IEA) data. Specifically, Jinan Yipin states that the Teri data provides electricity rates for 1999/2000, while the IEA data is for electricity rates in 1997 (even though it was published in 2001).

FGPA asserts that the data proposed by Jinan Yipin is not from a source on which the Department typically relies to value energy in cases involving a non-market economy and, because the record contains more appropriate data for valuing electricity, the Department should reject Jinan Yipin's argument in reaching its final results. FGPA states that the IEA data is published by a reputable international organization and the Department has used it repeatedly to value energy inputs in PRC dumping cases. In addition, it alleges that the Teri data provides no explanation of how the information was collected, aggregated, and reported and the publication makes no mention of whether the prices are tax-exclusive. FGPA also alleges that the agricultural electricity rates are subject to major subsidies from the Indian government.

FGPA suggests that the Department value electricity using the prices published in the audited financial statements of three Indian companies (i.e., Polychem Limited (Polychem), Premier Explosives Limited (Premier), and Hindustan Lever Limited (Hindustan)) because the Department used these prices to value electricity in Mushrooms from the PRC. It asserts that the prices in these financial statements are equally contemporaneous with the Teri data but, because the financial statements reflect actual electricity purchases by Indian companies, they are a more appropriate source for electricity prices.

FGPA admits that, although it has attempted to identify information in the 2000-2001 financial statements for Agro Dutch, Flex Foods, and Himalya, there is no identifiable information on electricity prices paid by the Indian certain preserved-mushroom producers during the relevant

period. The FGPA reiterates that, if the Department chooses not to value electricity using the financial statements of Polychem, Premier, and Hindustan, the Department should rely on the IEA's Energy Prices & Taxes: 2002 2nd Quarter data.

Jinan Yipin argues that using company-specific electricity rates runs contrary to the Department's established policy of using country-wide rates. Jinan Yipin indicates that in Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From The People's Republic of China, 67 FR 6482 (February 12, 2002), and accompanying Issues and Decision Memorandum, the Department stated its preference to use country-wide data over company-specific rates. Jinan Yipin claims that the IEA's publication proposed by FGPA is not on the record (the exhibit contains IEA's Energy Prices & Taxes: 2001 1st Quarter edition, not the IEA's Energy Prices & Taxes: 2002 2nd Quarter edition) and that, even though the publication was printed in 2001, the electricity data in the exhibit is from 1997, not 2000, as suggested by FGPA.

Citing the Factors of Production Values Used for the Preliminary Results Memorandum, dated July 1, 2002, for Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of 2000-2001 Administrative Review, Partial Rescission of Review, and Notice of Intent to Revoke Order in Part, 67 FR 45451 (July 9, 2002), and Creatine Monohydrate From the People's Republic of China; Final Results of Antidumping Duty Review, 67 FR 10892 (March 6, 2002), Jinan Yipin contends that the Department has used the Teri data as a surrogate to value electricity. Therefore, Jinan Yipin argues, in order to be consistent with its established practice to use more contemporaneous data, the Department should value electricity using the Teri data.

Department's Position: After reviewing the sources of data available to value electricity and considering previous determinations, we find that the Teri data is the most appropriate data on which to base the surrogate value for electricity. In Brake Rotors from the People's Republic of China: Preliminary Results of the Sixth Antidumping Duty New Shipper Review, 67 FR 38251 (June 3, 2002) (Brake Rotors from the PRC), we selected surrogate values based on their specificity, quality, and contemporaneity. Here, the Teri data is more contemporaneous than the IEA data on the record, and it is specific to agricultural production. Thus, the Teri data is the best and most contemporaneous information available on the record.

Further, we prefer to use country-wide data whenever possible and only resort to the use of company-specific rates when country-wide data is not available. Therefore, we have not used the company-specific surrogate values suggested by FGPA. Finally, we have disregarded the FGPA's assertion that the Teri data is tainted by subsidies from the Indian government because the assertions are unsubstantiated.

Comment 7: Treatment of Water as a Direct Material: Jinan Yipin asserts that, because most agricultural companies treat water as part of overhead instead of as a direct material, the Department should not value water separately as a direct material.

Jinan Yipin contends that in the Preliminary Results the Department relied on the same financial statements used in prior reviews of the dumping order on preserved mushrooms from the PRC. Jinan Yipin cites Mushrooms from the PRC at Comment 6, which states that “{w}ater does not appear to be treated as a direct material....” or to be included in raw materials and that “the available data include water costs in overhead.” Furthermore, Jinan Yipin asserts that, in Mushrooms from the PRC, the Department commented that the Flex Foods financial report

provides a detailed cost breakdown of each input included in the total cost of raw materials and “nowhere in this breakdown is water treated as a raw material cost.”

Therefore, Jinan Yipin suggests, in order to avoid double-counting and to remain consistent with its previous decisions, the Department should not value water separately as a direct material in this review.

FGPA argues that Jinan Yipin does not identify any specific references in the financial statements of Agro Dutch, Flex Foods, or Himalya which suggest that those companies treat water as a factory overhead expense. FGPA states that, in fact, because water is often considered an energy input by various sources and authorities – including in the Department’s calculation of normal value – it is likely that water expenses are included in the denominator of the factory overhead ratio in the line item for “Power & Fuel.”

In addition, FGPA argues that Jinan Yipin specifically identified water as a distinct factor of production in its questionnaire response, demonstrating that it considers this input to be a separate direct material under its own cost accounting system. Moreover, FGPA asserts, given that significant volumes of water are necessary to irrigate the fields as well as to distribute pesticides that Jinan Yipin applies to garlic, water is clearly an input that is central to Jinan Yipin’s ability to produce garlic and should be treated as a direct material.

Department’s Position: After reviewing the financial statements for Agro Dutch, Flex Foods, and Himalya and considering previous determinations, we find that it is impossible to ascertain in a certain line item of the financial statements we are using whether water expenses are included in the fixed or variable overhead expenses in the financial statements. Moreover, in Mushrooms from the PRC, we did not address whether the water expenses are included in fixed or

variable overhead in the financial statements. Given that water use for producing a crop will vary depending on the size of the crop, however, it is clearly a variable overhead expense. Therefore, we find that it is reasonable to presume that water expenses are treated as such in the financial statements.

In addition, although there is no direct evidence to support FGPA's assertion that water expenses are included in the line items for "Power & Fuel" in the financial statement, there is circumstantial evidence suggesting that this may be the case. The financial statement for Flex Foods aggregates water and electricity expenses for the purposes of general and administrative expenses. We find it is therefore not unreasonable to presume that the same was done for water expenses incurred in the production process.

Accordingly, because we find that Jinan Yipin has not supported its claim adequately that water expenses are included in fixed overhead expenses and because information derived from G&A in the financial statements suggests that water expenses were likely treated as variable overhead expenses in the financial statements, we find it appropriate to treat water as a variable overhead expense. Furthermore, while we agree with Jinan Yipin that water is not technically a direct material cost, we determine that it is appropriately classified as a variable overhead expense. Because we apply the factory overhead ratio to the sum of direct material costs, direct labor costs, and variable overhead expenses, it is ultimately irrelevant whether we include water expenses in direct material or in variable overhead expenses. To be technically precise, however, we have revised our calculations to include water expenses in variable overhead expenses rather than in direct materials expenses.

Comment 8: Inclusion of Packing Materials and Packing Labor as a Part of Direct Materials:

Jinan Yipin argues that the Department treated packing materials and packing labor incorrectly as part of direct materials. Jinan Yipin contends that, although the Department used the same ratio calculations in this review that it had used in Mushrooms from the PRC, the Department applied the ratios in a different manner. Specifically, Jinan Yipin contends that in the Preliminary Results the Department included all packing materials and packing labor as a part of direct materials. Therefore, it asserts, the Department applied the factory overhead, SG&A, and profit ratios to the values for packing materials and packing labor. Jinan Yipin contends that the Department's treatment of packing expenses as part of direct materials is contrary to the plain language of the statute, the Department's own precedent, and the Department's application of the same ratios in the reviews of the antidumping duty order on certain preserved mushrooms from the PRC.

Jinan Yipin acknowledges that there is a narrow exception to the general rule where containers that form "an integral part of the merchandise" have been treated as part of direct materials. Jinan Yipin contends, however, that a cardboard box and a mesh bag are not "integral parts" of fresh garlic bulbs. In addition, Jinan Yipin argues that the exclusion of certain packing and forwarding expenses using the SG&A ratios calculated from the Indian financial statements does not justify treatment of Jinan Yipin's packing materials as direct materials. It states that, because a surrogate value representing the full amount for the costs for packing materials and related expenses is included in the calculation of normal value after the application of the ratios, it is appropriate for the Department to remove packing-related expenses from the calculation of the SG&A ratios (whenever they can be isolated in the surrogate financial data) to avoid double-counting these expenses.

Accordingly, Jinan Yipin argues the Department should correct its calculation by applying

the surrogate ratios in its standard manner and then adding the packing costs to obtain a normal value.

FGPA argues that the cartons and mesh bags consumed in Jinan Yipin's production operations, as well as the labor necessary to pack fresh garlic into those cartons, are properly treated as direct materials because they are an "integral part of the product." Citing Washington Red Raspberry Comm'n v. United States, 859 F.2d 898 (Fed. Cir. 1988) (Raspberries), FGPA argues that, just as containers were an "integral part" of the raspberries at issue in order to prevent them from becoming "raspberry juice, or compote, at least," containers are also necessary to protect and hold fresh garlic bulbs during transport. FGPA also states that, because Jinan Yipin uses different packing materials, depending on the market into which that fresh garlic is sold, the cartons and mesh bags are an integral part of the product. FGPA suggests that, if Jinan Yipin were interested solely in packing its product for transport to market, it would not devote the time and expense necessary to print and pack garlic in cartons corresponding to the market in which the product is destined for sale.

Moreover, FGPA argues that because cartons and mesh bags are integral components of the product at issue, Jinan Yipin's reference to precedent in the Department's administrative reviews of the antidumping duty order on certain preserved mushrooms from the PRC is irrelevant.

FGPA asserts that, if the Department determines packing expenses are not an integral component of the merchandise at issue, it should continue to include packing expenses as a component of direct materials. It suggests that an understatement in calculated SG&A expenses would result because packing expenses are included in the cost-of-manufacture denominator derived from the financial statements of the Indian companies. FGPA asserts that, if the

Department is unable to identify in the financial statements the portion of labor and materials that are associated with packing and exclude these costs from the cost-of-manufacturing denominator, the Department should continue to include packing expenses as a component of direct materials.

Department's Position: After reviewing the financial statements for Agro Dutch, Flex Foods, and Himalya and the calculation of the surrogate financial ratios for factory overhead, SG&A, and profit, we find that we included packing materials and packing labor incorrectly as a part of direct materials.

For the Preliminary Results, we reviewed the financial statements for the three Indian mushroom companies and determined incorrectly that we were unable to separate packing expenses from the denominator of the factory overhead calculation. Therefore, we included packing expenses as a part of direct materials to avoid an understatement in SG&A expenses. After further review of the financial statements for these companies, we determined that we had, in fact, removed packing expenses from the cost-of-manufacturing denominator derived from the financial statements. Consequently, we have determined that we should not include packing expenses as a portion of direct materials in the calculation of the final margin.

Further, after reviewing our decision in Raspberries, we have determined that the packing materials and packing labor are not an integral part of fresh garlic. Fresh garlic is not nearly as fragile as red raspberries and the containers used for the shipment of fresh garlic to the United States can vary substantially.

Moreover, in our review of Mushrooms from the PRC, we found that cans and jars were determined to be an integral part of the product. Mushrooms in cans and jars are within the scope of the order; without cans and jars the mushrooms would not be considered subject merchandise.

In this proceeding, however, fresh garlic of any type, even if not packaged in cartons or mesh bags, is subject to the antidumping duty order. Therefore, we do not find the packing to be an integral part of fresh garlic. Accordingly, we have not included packing materials and packing labor as a portion of direct materials for the final results of review.

Comment 9: Carton Valuation: FGPA alleges that the Department relied upon an inappropriate surrogate to value cartons used by Jinan Yipin because data that the Department used corresponded to the Harmonized Tariff Schedule (HTS) tariff number for “Boxes of Corrugated Paper & Paperboard” rather than the provision for “Cartons & Cases of Corrugated Paper & Paperboard.”

FGPA argues that Jinan Yipin specifically identified the containers it used to pack fresh garlic as “Cartons” and that, while both tariff headings apply to containers made from corrugated paper and paperboard, HTS 4819.10.01 applies to “Boxes” whereas HTS 4819.10.09 applies to “Cartons & Cases.” FGPA alleges that, because the subject merchandise exported by Jinan Yipin to the United States is transported by sea, its packaging must be of superior quality to protect the garlic while it is in transit to prevent it from being crushed and damaged.

FGPA argues that the record strongly supports valuing “cartons” using only Indian imports of “cartons” classified under HTS 4819.10.09. FGPA requests that, in the event that the Department includes imports of “boxes” in the surrogate-value calculation, it should follow the methodology employed to value “Cardboard Boxes/Cartons” in Mushrooms from the PRC.

Jinan Yipin refutes the allegation that the Department should use HTS 4819.10.09 instead of HTS 4819.10.01. Jinan Yipin contends that the words “carton” and “box” are often used interchangeably when referring to an exterior cardboard packing container. In addition, Jinan

Yipin states that FGPA has not pointed to any information on the record that demonstrates that the cardboard containers used by Jinan Yipin are more similar to “cartons” than they are to “boxes” as described in the HTS Indian import statistics. Therefore, Jinan Yipin argues that FGPA’s argument has no merit and should be disregarded.

Department’s Position: The HTS number corresponding to “Cartons & Cases of Corrugated Paper & Paperboard” includes specialized containers and does not correspond to the plain cardboard containers used in the transportation of fresh garlic. Therefore, we find that the HTS number for “Boxes of Corrugated Paper & Paperboard” is the most appropriate approximation of the type of containers Jinan Yipin used for packing the subject merchandise and we have continued to rely on the surrogate value corresponding to HTS number 4819.10.01 in the calculation of our final results.

Comment 10: Fertilizer Valuation: In a post-Preliminary Results submission, Jinan Yipin requested that the Department use the HTS numbers from the Indian import statistics that it is currently using in the ongoing administrative review to value fertilizer. Originally, Jinan Yipin had requested that the Department use HTS number 3105.2000, stating that it “most closely matches the fertilizer used by Jinan Yipin to harvest garlic.” See Jinan Yipin’s May 30, 2002, surrogate-value submission. Since the publication of the preliminary results of the ongoing administrative review, however, Jinan Yipin suggests that the Department instead should use the data from the ongoing administrative review.

FGPA argues that the Department should reject the alternate HTS numbers to value fertilizer proposed by Jinan Yipin in its post-Preliminary Results submission. FGPA contends that the data does not correspond to the type of fertilizer Jinan Yipin actually used in its production

process and that the Department should continue to value fertilizer using the surrogate value it used in the Preliminary Results. FGPA argues that the Indian import statistics the Department used in the preliminary results of the ongoing administrative review are for types of fertilizer and tariff number classifications that are different from the type of fertilizer and tariff number classification Jinan Yipin identified as the most representative of the fertilizer it used during the POR. Therefore, FGPA asserts, the fertilizer data from the ongoing administrative review does not represent the most accurate surrogate value with which to value Jinan Yipin's fertilizer.

Moreover, FGPA asserts that the Indian import data for fertilizer submitted by Jinan Yipin in the ongoing administrative review is less contemporaneous with the POR than data already on the record that more closely corresponds to the fertilizer Jinan Yipin actually used in its production operations. Citing Brake Rotors from the PRC, FGPA asserts that the Department's established precedent is to select surrogate values based on their specificity, quality, and contemporaneity. FGPA contends that, should the Department value Jinan Yipin's fertilizer usage based on surrogate prices used to value a different factor of production for a different producer and time period, it would result in an inaccurate calculation of normal value and an inappropriate dumping margin. Accordingly, FGPA argues that, for purposes of its final results, the Department should reject the surrogate data for fertilizer advanced by Jinan Yipin in its post-Preliminary Results submission and continue to use the surrogate prices it used to value fertilizer in the Preliminary Results.

Jinan Yipin did not comment on this issue.

Department's Position: We find that the surrogate value on which we relied for the Preliminary Results continues to be the most appropriate surrogate value for fertilizer. In Jinan Yipin's original surrogate-valuation submission, it provided surrogate-value data for a HTS

number that it said was the category of product most similar to the fertilizer it used. We used this data in the Preliminary Results. Jinan Yipin has not provided adequate reasoning or evidence as to why the surrogate value we used in the ongoing administrative review is a more accurate surrogate for this new shipper review. Therefore, we have not changed our valuation for fertilizer.

RECOMMENDATION:

Based on our analysis of the comments received, we recommend adopting all of the above changes and positions, and adjusting the margin calculation accordingly. If accepted, we will publish the final results of the new shipper review and the final weighted-average dumping margin in the Federal Register.

AGREE _____ DISAGREE _____

Faryar Shirzad
Assistant Secretary
for Import Administration

Date