

MEMORANDUM TO: James J. Jochum
Assistant Secretary
for Import Administration

FROM: Jeffrey A. May
Deputy Assistant Secretary
for Import Administration

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): Jinxiang Shanyang Freezing Storage Co., Ltd. (Shanyang) and Wangtun Fresh Vegetable Factory (Wangtun)

Summary

On July 6, 2004, the Department of Commerce (the Department) published the preliminary results of the new shipper review of the antidumping duty order on fresh garlic from the PRC and invited parties to comment on our preliminary results. See Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review, 69 FR 40607 (July 6, 2004) (Preliminary Results). The period of review (POR) for this new shipper review is November 1, 2002, through October 31, 2003. On August 5, 2004, we received comments from the respondent, Shanyang. On August 10, 2004, we received rebuttal comments from the Fresh Garlic Producers Association and its individual members (collectively, the petitioners). On August 18, 2004, the Department rejected Shanyang's August 5, 2004, case brief because it contained untimely new factual information. However, at the Department's request, Shanyang submitted a redacted case brief (less any new factual information) on

August 24, 2004.

We did not make any changes to the margin calculation program for Shanyang as a result of comments submitted by parties. We do, however, recommend using a different surrogate value for the cost of leasing land instead of the value used in the Preliminary Results. In keeping with the final results of the immediately preceding new shipper reviews, covering the period November 1, 2002 through April 30, 2003, we propose using the surrogate value calculated from the information contained in the 2001 Punjab State Development Report administered by the Planning Commission of the government of India (Punjab Report).

We recommend that you approve the positions that we have developed in the “Discussion of the Issues” section of this memorandum. Below is the list of the issues for which we received comments by parties in this review:

1. Valuation of Water
2. Selling, General, and Administrative Expenses and Profit Calculation
3. Valuation of Leased Land
4. Valuation of Upstream Input Factors

Discussion of the Issues

Comment 1: Valuation of Water

Shanyang argues that because it does not pay for water there is no basis for the Department to value water in the margin calculation for the final results. In addition, Shanyang argues that because the surrogate value for water is based on an average of municipal water rates, the Department is imposing a cost based on city water rates for agrarian purposes. Therefore, Shanyang argues, if the Department

continues to value water, it should find a more reasonable value than high-priced city water when valuing water. Further, the respondent claims that because the water expense is reflected in Parry Agro Industries Limited's (Parry Agro's) financial statement, the Department has double-counted the cost for water by valuing it separately as an input. Finally, the respondent argues that the flow rate used by the Department in its calculation of a water-usage rate is incorrect because the flow rate is not based on the actual depth of the water table at Wangtun's fields. Shanyang asserts that the Department ~~did~~ not verify the actual depth of the water table at Wangtun's fields and assumed that the flow rate listed in exhibit 45 of the Department's verification report was applicable to Wangtun. Shanyang argues that the Department should correct its calculations for a water-usage rate by requesting data from Wangtun demonstrating the actual depth at which Wangtun's water pumps operated during the POR.

The petitioners' state that, the arguments in this segment of the preceding that the Department should not value water separately because, it should be treated as an overhead expense and Shanyang gets its water for free, are no different from the arguments rejected in Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 69 FR 33626 (June 16, 2004) and accompanying Issues and Decision Memorandum at Comment 2 (11/01 to 10/02 AR and NSRs). Citing Pacific Giant, Inc. v. United States, 223 Supp. 2d 1336 (CIT 2002) (Pacific Giant), the petitioners contend that the Department's decision to value water as a direct material input was proper and in accordance with past practice. The petitioners point out that in Pacific Giant the CIT found that water constituted a factor of production because of its use for "more than incidental purposes" in the production of the subject merchandise. The petitioners contend further that Pacific Giant clearly requires that water used in the cultivation of fresh garlic be valued as a

direct material input.

In addition, the petitioners argue that the Department has not double-counted the cost for the water by valuing it separately as an input. The petitioners argue that there is no evidence to suggest that Parry Agro included water-related expenses as part of its factory overhead or even used irrigation water in the production of tea.

The petitioners argue that to not assign a separate value for water would be to ignore a significant factor of production and therefore, understate normal value. Therefore, they argue, the Department should reject the respondent's arguments and continue to value water for the final results.

Department's Position: We have continued to value water separately as a factor of production for the final results and have determined that doing so does not result in double-counting. In Pacific Giant, the CIT stated,

First, the statute plainly focuses on the quantity of inputs for factors of production rather than the costs associated with them. It states that "the factor of production utilized in producing merchandise include, but are not limited to – (A) hours of labor required, (B) *quantities* of raw materials employed (C) *amounts* of energy and other utilities consumed, and (D) representative capital cost including depreciation." 19 U.S.C. §1677b(c)(3). Second, water constitutes a factor of production in this case because of its use for more than incidental purposes. *See Decision Memo* at 22 (emphasis in original).

As the CIT stated in Pacific Giant, the statute specifies clearly that, for the purpose of constructing normal value in a non-market economy case, the Department constructs the factors of production based on the quantities of the inputs, not the costs associated with those inputs. Thus, regardless of whether the respondent purchased or collected water, the Department still uses the quantity of raw materials employed in its calculation of constructed value. Moreover, water is a direct

factor of production of garlic because irrigation of the crops requires large quantities of water, and this is clearly different from water used by a company for incidental purposes. Contrary to the assertion by Shanyang that the Department has double-counted the cost of water, there is no evidence in the financial statements of Parry Agro to suggest that the company incurs a cost for water. Nor is there any evidence on the record that irrigation water is essential to the production of tea in India. See the Department's Position in 11/01 to 10/02 AR and NSRs at Comment 2 (providing the same analysis of alleged "double-counting").

Not until the submission of its case brief did the respondent argue that the Department should not use a municipal-water rate for agrarian purposes, but should use a more reasonable value than the high-priced city water used in the Preliminary Results. We recognize that garlic is grown in an agrarian context and that the value of water used in the country for agrarian reasons may differ from the value of water in the city used for municipal purposes. We do not, however, have any information on the record with respect to the value of water used for agrarian purposes and the respondent has not placed any such value on the record. As such, based on the information on the record of this review, for these final results, we have continued to value water as we did in the Preliminary Results (i.e., based on the tariff rates reported in the Second Water Utilities Data Book: Asian and Pacific Region, published by the Asian Development Bank).

Finally, we disagree with the respondent's assertion that we should adopt an alternative water depth in our calculation of a water usage rate for the final results. Section 776(a)(2) of the Tariff Act of 1930 (the Act) provides that, if, in the course of an antidumping review, an interested party (A) withholds information that has been requested by the Department, (B) fails to provide such information

in a timely manner or in the form or manner requested, (C) significantly impedes a proceeding under the antidumping statute, or (D) provides such information but the information cannot be verified, then the Department shall, subject to sections 782(d) and (e) of the Act, use the facts otherwise available in reaching the applicable determination.

Shanyang never reported a consumption factor for the water used in the production of subject merchandise when requested to do so. On April 8, 2004, we issued a supplemental questionnaire to the respondent requesting “the source documentation used to ascertain the specifications of the pumps used in the calculation” of water consumption. The respondent stated in its April 27, 2004, supplemental response that “because the engineer is not in town, we are not able to provide the information on the specifications of the pump but will provide the information at a later date.” Subsequent to this, we sent two additional questionnaires to Shanyang. On May 17, 2004, Shanyang responded to our third supplemental questionnaire and at exhibit SQ-13-56 of the submission, finally identified the pump specifications for the model type and corresponding water flow rate (based on water depth) used in the production of garlic during the POR.

On May 28, 2004, prior to verification, we informed Shanyang that we would be verifying all the factors of production including water consumption as indicated in our verification outline. From June 7, 2004, through June 12, 2004, the Department conducted a verification of the responses. During verification, company officials provided the same brochure included in exhibit SQ-13-56 of Shanyang’s May 17, 2004, response and identified the model type and pump specifications used in the production of fresh garlic during the POR. See verification report from analysts Brian Ellman and Sochieta Moth to The File titled “Verification of Responses of JinXiang Shanyang Freezing Storage

Co., Ltd., and Wangtun Fresh Vegetable Factory in the Antidumping Duty New Shipper Review of Fresh Garlic From the PRC,” dated June 28, 2004, at page 25 (Shanyang Verification Report).

Company officials gave no indication during verification that the water depth during the POR was different from the average water depth reported in the May 17, 2004, supplemental questionnaire response. Prior to and during verification Shanyang had the opportunity to inform the Department that its actual experience with respect to the water depth was different from the water depth indicated in the brochure in its supplemental questionnaire response. Had such an alleged discrepancy been brought to our attention at that time, we would then have attempted to verify the information and use it in our calculation of the water consumption factor for Wangtun.

Section 776(a)(2)(B) of the Act states that the use of facts otherwise available in reaching a determination is warranted when requested information is not provided to the Department in a timely manner or in the form or manner requested. Shanyang did not submit a consumption factor for water in its questionnaire response or indicate during verification that the water depth was different from the average water depth indicated in exhibit SQ-13-56 of the May 17, 2004, response and examined at verification (see exhibit 45 of the Shanyang Verification Report). Based on information provided by company officials before and at verification, we calculated a water consumption factor for Shanyang. As such, we determine that, in accordance with section 776(a)(2)(B) of the Act, the use of facts available is appropriate for calculating a consumption factor for water.

On August 5, 2004, Shanyang filed a case brief that contained unsolicited new factual information submitted past the deadline for submitting new factual information. The Department removed the submission from the record and offered Shanyang an opportunity to submit a redacted

case brief (less any new factual information). On August 24, 2004, the respondent resubmitted its case brief. The respondent requested that the Department collect data regarding the actual depth at which the water pumps operated during the POR. Even if the Department made the decision to request the information, at such a late stage in the proceeding the data would be unverifiable.

For the reasons outlined above, pursuant to section 776(a)(2)(B) of the Act, as facts available we will continue to use the flow rate verified by the Department in our calculation of a water-usage rate for the final results.

Comment 2: Selling, General, and Administrative Expenses and Profit Calculation

Shanyang argues that the Department made a clerical error by including the value of sprouts (by-product revenue) in the cost build-up to which the Department applied the selling, general, and administrative (SG&A) expense and profit ratios.

Citing the July 26, 2004, Issues and Decision Memorandum for the November 1, 2002, to April 30, 2003, new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China at Comment 5, the petitioners argue that the Department's inclusion of the value of sprouts in the calculation of SG&A and profit was both deliberate and correct. Therefore, they assert that the Department should disregard Shanyang's argument.

Department's Position: We disagree with the respondent's assertion that we made a clerical error. The cost build-up to which we apply the SG&A expense and profit ratios should not be offset for sprout revenue, because in calculating the SG&A expense and profit ratios from Parry Agro's income statement, the denominators used to calculate these ratios were not offset for by-product revenue. The amount to which these ratios are applied must be on the same basis as the denominators

used to calculate the ratios. To do otherwise, misstates the results. As such, we need to apply the SG&A expense and profit ratios to cost amounts that are not offset for by-product (sprout) revenue.

This methodology is consistent with the Department's practice in the final results of the preceding new shipper reviews. See Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty New Shipper Reviews, 69 FR 46498 (August 3, 2004) and accompanying Issues and Decision Memorandum at Comment 5 (11/02 to 4/03 NSRs). Moreover, we rechecked our calculations and confirmed that the total cost of production of the subject merchandise has been calculated after being offset for the by-product (sprout) revenue properly.

Comment 3: Valuation of Leased Land

Shanyang comments that, although it does not agree that a value for land is appropriate or that the land-lease rates for "cultivable wasteland" reflected in attachment 3 of the memorandum from Brian Ellman to The File entitled "Analysis for the Preliminary Results of the New Shipper Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Jinxiang Shanyang Freezing Storage Co., Ltd., and Wangtun Fresh Vegetable Factory," dated June 28, 2004, (Preliminary Analysis Memo), are valid, it argues that the Department's use of the rate Rs. 400 per hectare in its calculations is applicable for leases that have been in existence for more than 10 years. The respondent asserts that it leased land in 1999 (four years prior to the POR). Therefore, Shanyang argues that the Department should use the rate of Rs. 125 per hectare in its calculations, which reflects leases in existence between 2-5 years.

In addition, Shanyang argues that the lease rates used by the Department are reflective of lease rates specific to only one state within India and are not representative of an entire range of land-lease

rates throughout India. Citing Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp from the People's Republic of China, 69 FR 42654, 42666 (July 16, 2004), Shanyang argues that the Department should reject the land-lease data because the data does not represent the entire “range of prices” throughout India.

Finally, Shanyang argues that land is an overhead expense. Even though Parry Agro does not show a separate cost for land, the respondent argues, it must be hidden in one of its financial ratios (e.g., overhead). Therefore, Shanyang argues, the Department should exclude the land-lease rate from its calculations to avoid double-counting.

Citing the Preliminary Analysis Memo at 5, the petitioners argue that none of the financial ratios for Parry Agro reflect the cost of land. Therefore, because the cost of leasing land on which the garlic is grown is not included as a factor of production or in the surrogate overhead calculation, thereby understating the normal value calculation, the petitioners assert that the Department is correct in applying a surrogate value for leased land in its margin calculation for the final results.

The petitioners argue that the respondent's assertions that the land-lease rate is too high and that the Department is required to use data for all of India, rather than a single state, lacks merit and should be rejected. The petitioners argue that the Department is required to make its determination based on the basis of facts available as described in attachment 3 of the Preliminary Analysis Memo. Further, the petitioners assert that the respondent's leased land (since 1999) qualifies as something more than “cultivable wasteland,” therefore, under the circumstances, it was appropriate for the Department to use the reported value for the most arable of this “wasteland,” which includes the 10-

year lease rate. The petitioners also argue that in the absence of lease-rate data for the whole of India, it was perfectly reasonable for the Department to use published data from Rajasthan only.

Department's Position: As we stated in the Preliminary Results, the cost of land is an important component in the cost build-up of normal value and is not reflected in the financial ratios we have gleaned from the Parry Agro financial statements. In the preliminary results of this review, we applied a surrogate value for leased land based on a 1996 policy notification issued by the State of Rajasthan, in which the state government set an annual lease rent for cultivable wasteland. In the final results of the immediately preceding new shipper reviews covering the period November 1, 2002, to April 30, 2003, when exploring additional publicly-available information concerning the cost of leasing land in India, the Department obtained the Punjab Report. See **11/02 to 4/03 NSRs**.

We find that the Punjab Report contains more relevant and contemporaneous information pertaining to the Indian land-lease market for agrarian farmland. Hence, the subject of the Punjab Report is clearly more similar to the type of land leased by the respondent during the POR. Further, the data contained within the Punjab Report is based on actual experience, whereas the data contained within the 1996 policy notification was based on parameters that may not have been implemented or that may have since been amended. According to the Punjab Report, the modal annual rent for farmland in the State of Punjab was found to be 17,500 rupees per hectare. As this rate was based on information gathered in 2001, we have inflated the annual cost of land and have converted the values to calculate an annual land-lease cost of \$26.55/mu. Upon review of the record of this new shipper review, we find no information undermining the figure contained within the Punjab Report. As such, based on all available information, we have determined that the figure contained within the Punjab

Report serves as the most reliable basis for determining a surrogate value for calculating the cost of the farmland used to grow the subject merchandise. Accordingly, for purposes of these final results, **we have applied a land-lease cost to our calculation of normal value** using the methodology established **in the 1/02 to 4/03 NSRs**.

With respect to Shanyang's argument that we should use the rate of Rs. 125 per hectare in its calculations, which reflects leases in existence between 2-5 years, this matter is no longer an issue because, as discussed above, we are using a different source to value land for the final results.

With respect to Shanyang's argument that the lease rates we used in the Preliminary Results are not representative of an entire range of land-lease rates throughout India, as discussed above, based on all available information on the record and absent information on land-lease rates throughout India, we have determined that the figure contained within the Punjab Report serves as the most reliable basis for determining a surrogate value for calculating the cost of the farmland used to grow the subject merchandise.

We disagree with the respondent's argument that, even though Parry Agro does not show a separate cost for land, it must be hidden in one of its financial ratios (e.g., overhead) and therefore, the Department should exclude the land-lease rate from its calculations to avoid double-counting. The Parry Agro financial statements do not have a separate line item for leasing expenses and, absent a line item listing such expenses, the Department has no reason to presume the existence of this cost in the surrogate company's overhead expenses. See Certain Preserved Mushrooms From the People's Republic of China: Final Results of Sixth Antidumping Duty New Shipper Review and Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review, 69 FR 54635

(September 9, 2004), and accompanying Issues and Decision Memorandum at Comment 3.

Moreover, the depreciation schedule at page 23 of the Parry Agro financial statement indicates that it owned the land, but there is no indication that the land was depreciated. Therefore, absent information to the contrary, we determined that the cost of land is not reflected in the financial ratios gleaned from the Parry Agro financial statements and that the inclusion of a value for the cost of leasing land does not result in double-counting.

Comment 4: Valuation of Upstream Input Factors

The petitioners cite Certain Frozen Fillets From the Socialist Republic of Vietnam; Notice of Preliminary Determination of Sales at Less Than Fair Value, 68 FR 4986 (January 31, 2003), and Final Determination of Sales at Less Than Fair Value: Certain Frozen Fillets From the Socialist Republic of Vietnam, 68 FR 37116 (June 23, 2003) (Certain Frozen Fillets), and argue that the Department should not value upstream input factors and instead should value the intermediate product, raw garlic, and the subsequent processing operations to derive a normal value for fresh packed and peeled garlic. They further argue that, because Shanyang is not an integrated producer, and purchases its garlic from an unaffiliated company, valuing the intermediate product is warranted. Despite the fact that the Department valued the cost of land in the Preliminary Results, the petitioners argue that this approach to valuation is further warranted because valuing seed and other upstream inputs understates the true cost of growing fresh garlic because it excludes the single largest cost component, land.

In their June 4, 2004, submission, the petitioners assert that their main reason for suggesting this course of action is because they contend that the factor value data reported by the respondent in this

review and the respondents in other segments of this proceeding are disparate and anomalous and call into question the basic credibility of the data.

Citing their June 4, 2004, submission at Attachment 1, the petitioners also argue that a review of Shanyang's reported factor-usage rates when compared to the factor-usage rates reported by respondents in the 2002/2003 administrative review of this order indicate that the amounts reported by Shanyang are so widely divergent as to be inexplicable and unusable by the Department in the final results of this new shipper review. Specifically, the petitioners argue that Shanyang's clove/seed usage rate when compared to the clove/seed usage rate reported by specific respondents in the 2002/2003 review is so divergent that the Department should reject its current factor-valuation methodology for one that instead values the intermediate product.

Department's Position: We disagree with the petitioners assertion that the situation in this new shipper review is analogous to that examined in Certain Frozen Fillets. Unlike in Certain Frozen Fillets where the Department was concerned that it could not account for all the costs in the factors build-up, in this case, the Department verified both Shanyang and Wangtung and in calculating normal value captured all the costs relevant to the production of garlic. Moreover, the petitioners' comment that their suggested approach to valuation is further warranted because it excludes the single largest cost component, land, is misplaced because, as stated above, in the Preliminary Results, the Department acknowledged that the cost of land is an important component in the cost build-up of normal value and is not reflected in the calculated financial ratios and accounted for this factor by adding the cost of land to the cost build-up of normal value. See the Preliminary Analysis Memo. Further, in Certain Frozen

Fillets, the Department was concerned about the upstream data provided by certain respondents who had misreported or not reported certain factors of production. This is not the case in this review.

In addition, the assertions made by the petitioners that Shanyang's factor-usage rates are disproportional when compared to the factor-usage rates reported by the respondents in the 2002/2003 administrative review of garlic from the PRC are similar to the arguments they made and we rejected in the 2001/2002 administrative review. See **11/01 to 10/02 AR and NSRs at Comment 8**.

While making a general comment with respect to Shanyang's factor-usage rates, the petitioners comment on only two specific factor-usage rates: clove/seed usage and water usage. We find no reason to question the factor-usage rates Shanyang reported for this new shipper review. During the verification of Shanyang's responses, the Department examined production and accounting information to ensure that Shanyang reported its factor-usage rates for each material input (e.g., clove/seed usage) used in the production of fresh garlic accurately. See Shanyang Verification Report. As we stated in the **11/01 to 10/02 AR and NSRs at Comment 8**, “[e]ach respondent reported its factor-usage rates based on its experience in growing garlic.” In addition, as claimed by the petitioners, although Shanyang did not report a water-usage figure, the Department was able to calculate a water-usage rate based on facts available on the record. The record of this review does not warrant rejecting Shanyang's reported factor-usage rates (e.g., clove/seed) or justify stepping away from the Department's established factor-valuation methodology that values upstream inputs. For the final results of this review, we find that the facts of this specific review do not warrant the rejection of Shanyang's factor-usage rates in favor of a valuation methodology that values the intermediate product.

Recommendation

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

Agree _____ Disagree _____

James J. Jochum
Assistant Secretary
for Import Administration

Date