

69 FR 46498, August 3, 2004

A-570-831
NSRs: 11/01/02–4/30/03
Public Document
AD/CVD 5: The Garlic Team

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

FROM: Gary Taverman
Acting Deputy Assistant Secretary
for Import Administration, Group I

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

Summary

We have analyzed the case briefs in the new shipper reviews of Sunny Import & Export Limited, Linshu Dading Private Agricultural Products Co., Ltd., Shanghai Ever Rich Trade Company, Taian Ziyang Food Co., Ltd., and Jinxiang Dong Yun Freezing Storage Co., Ltd., in the antidumping duty order on fresh garlic from the People's Republic of China (PRC). We did not receive rebuttal comments from any parties. The period of review (POR) for the new shipper reviews is November 1, 2002, through April 30, 2003. As a result of our analysis, we have made changes in the margin calculation for all five companies. 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 these reviews:

1. Application of Surrogate Financial Ratios
2. Valuation of Garlic Seed

3. Valuation of Ocean Freight
4. Fixed Overhead Calculation
5. Selling, General, and Administrative Expenses and Profit Calculation

Discussion of the Issues

Comment 1: Application of Surrogate Financial Ratios

Sunny and Linshu Dading assert that in calculating the overhead, selling, general and administrative expenses (SG&A), and profit amounts for normal value, the Department applied the surrogate financial ratios incorrectly to production costs that include packing expenses. They argue that application of the surrogate ratios to production costs that include packing expenses is contrary to statutory intent, Departmental practice, and evidence on the record in these reviews. They argue specifically that provisions under sections 773(b) and (c) of the Tariff Act of 1930, as amended (the Act), make it clear that packing expenses are to be calculated separately and added to the cost of production after the Department has calculated costs for direct materials and applied the surrogate financial ratios to those values. In support of their argument, the respondents cite several final determinations of less-than-fair-value investigations in which the Department added packing costs to the cost of production after the ratios had been applied to the other expenses (e.g., Creatine Monohydrate from the People's Republic of China, Final Determination of Sales at Less Than Fair Value, 64 FR 71104 (December 20, 1999), and Collated Roofing Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 62 FR 51410, 51413 (October 17, 1997)).

Sunny and Linshu Dading cite Fresh Garlic from the People's Republic of China: Final Results of New Shipper Review, 67 FR 72139 (December 4, 2002) and accompanying Issues and Decision

Memorandum at Comment 8, where the Department concluded that, because fresh garlic, packaged or unpackaged, was subject to the antidumping duty order, the packing was not an integral part of the product and should not be included as a portion of direct materials in the calculation of the cost of production. In addition, they assert that the record of this segment of the proceeding does not support the application of the surrogate financial ratios to production costs that include packing expenses. Specifically, the respondents assert that an accounting note in the annual report of the company the Department selected for surrogate financial information clarifies that packing expenses are not included in the value the Department used as the denominator for the surrogate financial ratio calculations. They contend that, because it is clear that the denominator of the surrogate financial ratio calculation does not include packing expenses, it is improper to apply the resulting surrogate financial ratios to production costs that included packing expenses for calculating the overhead, SG&A, and profit amounts included in normal value. The petitioners did not comment on this issue.

Department's Position: For the final results of these reviews we have re-examined the annual report of Parry Agro Industries Limited (Parry Agro), the Indian tea producer that we selected for surrogate financial information, and the costs that we obtained from this company's income statement and included in the numerator and denominator of the surrogate financial ratio calculations. We were not able to determine whether Parry Agro performed packing activities associated with the tea it produced as its financial information does not indicate that it incurred any packing expenses. Furthermore, in the event Parry Agro did incur packing expenses, we do not know the extent to which such expenses are in the values we obtained from its income statement for purposes of calculating the

surrogate financial ratios because packing expenses are not included as a line item or distinguished or described in the income statement in any way. Where the Department cannot ascertain from the surrogate financial information whether packing expenses are in the surrogate financial ratio calculations, such as in the denominator, it is not necessarily appropriate to include packing expenses in the production costs to which the surrogate financial ratios are applied. If packing expenses are not in the denominator of surrogate financial ratio calculations or, as here, we cannot identify where and to what extent such expenses are in the ratio calculation, and we apply the ratios to production costs that include amounts for packing materials and labor, we may distort the amount of overhead, SG&A, and profit that we calculate for normal value. Accordingly, for the final results of these reviews, in calculating the amount of overhead, SG&A, and profit included in normal value, we have determined not to apply the surrogate financial ratios to production costs that include packing expenses (i.e., we have removed packing expenses from the production-cost build-up to which we apply the surrogate ratios).

As in the Preliminary Results, we have calculated separate surrogate values for materials and labor directly associated with packing fresh garlic from the PRC and added these packing expenses to the construction of normal value.

Comment 2: Valuation of Garlic Seed

Sunny and Linshu Dading argue that the Department should value garlic seed by using data from the Indian import statistics instead of domestic prices for three high-yielding Indian varieties of garlic. The respondents argue that the Department's reliance on information contained in an unpublished market research report submitted by the petitioners contradicts case precedent and

Departmental practice and policy. They cite the decision by the Court of International Trade (CIT) in Yantai Oriental Juice Co. V. United States, Slip Op. 02-56, 2002 WL 1347018 (CIT June 18, 2002) (Yantai Oriental), in support of the proposition that the Department is required to corroborate information provided in a private research report prior to relying on it for selection of a surrogate value. They also cite the CIT's finding in Yantai Oriental (Slip Op. 02-56 at 5-6) that it was insufficient for the Department to base its selection on conclusory statements provided in the market research report and that, instead, the Department was obligated to explain the connection between claimed factual information and its surrogate selection.

The respondents assert that, although the Department made the tie between corroborated information concerning the physical characteristics of the Indian varieties of garlic and its selection, it did not do so with regard to the characteristics of the subject merchandise and, thus, it erred in its reliance upon conclusory statements in the report that drew comparisons between the Indian varieties and the subject merchandise. The respondents also cited, as reference to Departmental practice and policy, Honey From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review, 68 FR 62053 (October 31, 2003) (Honey Final), and accompanying Issues and Decision Memorandum at Comment 2, in which the Department opted not to use pricing data contained in a market research report that had little or no supporting documentation.

The respondents argue that the record does not establish that the subject merchandise is similar to the three Indian varieties of garlic. They comment that the market research report indicates that the Indian varieties were developed scientifically by the National Horticultural Research and Development Foundation (NHRDF) in contrast to the seed used by Sunny and Linshu Dading, which the respondents

assert is not specially engineered. They comment that the petitioners' argument presumes that the sizes of the grown varieties will be identical to those of the seed but that the record shows that the size of the bulbs are the result of several factors, including agricultural practices. The respondents contend that the Department based its surrogate selection on the yield of the Indian varieties, which it found to be similar to that of the subject merchandise, and that the information that the petitioners provided regarding yields of the varieties was unsubstantiated and inaccurate.

The respondents argue that the selected domestic prices, taken from NHRDF price lists submitted by the petitioners, are specific to one organization and one geographic area and that, therefore, the use of these prices are contrary to Departmental practice. They cite Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review, 67 FR 72139 (December 4, 2002) (Jinan Yipin New Shipper Review), and accompanying Issues and Decision Memorandum at Comment 6 in support of the proposition that the Department prefers the use of country-wide data to the use of company-specific rates. They also comment that the Northern region of India, the region in which the three varieties of garlic are grown, produces a lower volume of garlic than the main garlic-producing regions in the Western and Central states of India and that, consequently, the NHRDF prices are not country-wide values.

The respondents argue that the Department should not rely on the NHRDF prices in its selection of a surrogate value because they are not market prices. Sunny and Linshu Dading argue that, because the NHRDF is a government-sponsored research center, its prices are not affected by market competition and the aberrational high prices of the three varieties at issue do not reflect the realities of the garlic market in India. They argue that use of such prices in the selection of a surrogate value is

inconsistent with legal precedent and Departmental practice.

Finally, the respondents assert that the Department should use Indian import data to value garlic seed in keeping with a prior administrative review, Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review in Part, 68 FR 4758 (January 30, 2003) (Seventh Administrative Review), in which it valued the seed using this data. They comment that, as in that review, the petitioners have neither demonstrated that the seed used by the respondents is similar to the three Indian varieties nor that the import data is unreliable. The petitioners did not comment on this issue.

Department's Position: We discussed our selection of a value for seed at length in the factors-valuation memorandum for the Preliminary Results. In that memorandum, we reviewed the numerous comments made by the petitioners and Sunny and Linshu Dading. We concluded that the NHRDF pricing information submitted by the petitioners in their October 31, 2003, submission (which was based on publicly available prices listed in issues of the NHRDF News Letter dated from July 2001 through December 2002) was more product-specific than the Indian import data. We also found similar publicly available information at NHRDF's website, (<http://www.nhrdfindia.com/htmlfiles/Garlic/link2.htm>). Consequently, we selected this information for the surrogate valuation of seed.

The bulb diameter and the number of cloves per bulb provided the basis for our conclusion that three of the varieties in the chart were similar to the subject merchandise. We relied on these characteristics because we are familiar with the average bulb diameter and number of cloves per bulb of the subject merchandise.

For the Preliminary Results, we selected the pricing information for the Agrifound Parvati, Yamuna Safed, Yamuna Safed-2, Yamuna Safed-3, and Agrifound White varieties (which, together, we considered to constitute three high-yielding varieties). Upon closer review of the bulb diameter and number of cloves per bulb of each variety, we find that only the Agrifound Parvati and the Yamuna Safed-3 varieties match the subject merchandise closely in these key characteristics. Thus, for the final results, we have selected the pricing information of these two varieties for use as the surrogate value for seed. This narrowing of the selection does not change the amount of the value for the final results because the prices for all of the varieties we used in the preliminary results were identical.

We did not base our selection of pricing data on the production yields of different varieties of garlic because we considered the record insufficient to draw comparisons between these yields and the yields of the respondents' various POR crops. Further, although the market research report provided summaries of the source documentation and conclusory statements, the information was not the basis for our selection of pricing data. The basis for our selection of pricing data was the descriptive information provided in the NHRDF technical bulletin and the information provided by the respondents in their questionnaire responses and at verification. See NHRDF News Letter dated from July 2001 through December 2002.

The respondents ask us to disregard the prices of the Indian varieties on the basis that the physical characteristics of the grown garlic may not match that of the seed. It is our practice and policy to base surrogate valuations on product-specific information. The pricing information of the two selected varieties represent the most product-specific information on the record. The alternative information, Indian import data, is considerably less product-specific because we cannot ascertain the

quality or nature (i.e., bulbs, loose cloves, etc.) of the garlic products entered under the applicable HTS category. In the Seventh Administrative Review, we selected the import data over the NHRDF pricing data submitted by the petitioners. In these reviews, the detailed information on the record about the seed varieties enabled us to draw significant similarities between certain pricing information from NHRDF and the subject merchandise.

The NHRDF prices represent prices of one supplier, but in this case the supplier developed the seed varieties in question and shapes the market for the input. Furthermore, the NHRDF prices are based on product-specific sales to many buyers throughout the POR. The alternative data on this record, the Indian import data, is not product-specific and covers a broad category of garlic products. Moreover, we have no basis on which to conclude that the NHRDF prices are not market prices. Without evidence indicating that these prices are subsidized by the Indian government or otherwise not responsive to market forces, we cannot conclude that the prices are not country-wide, market-based prices.

Comment 3: Valuation of Ocean Freight

Sunny contends that the Department should value ocean freight using the more accurate and comprehensive freight rates now on the record from the Descartes Carrier rate-retrieval database (Descartes database). Sunny asserts that the freight quotes from the Descartes database are more comprehensive and accurate than Linshu Dading's ranged market-economy ocean freight rate the Department used to value its ocean freight in the Preliminary Results. Sunny contends that there is no reason for the Department to resort to a distorted or ranged ocean freight rate for the final determination given that a more accurate freight rate is now available on the record. Sunny contends

that the Department, pursuant to its obligations to calculate margins as accurately as possible, should use rates obtained from the Descartes database to value ocean freight for the final results. The petitioners did not comment on this issue.

Department's Position: We stated in the FOP Memorandum for the Preliminary Results that we did not use the ocean freight rate quotes obtained from the Descartes database because they were for non-refrigerated containers. See Memorandum from Katja Kravetsky to The File titled "Factors Valuations for the Preliminary Results of the New Shipper Reviews" dated April 26, 2004. In the Preliminary Results, we used Linshu Dading's ranged market-economy price for ocean freight as the surrogate value. We divided this rate (USD 222/MT) by 1000 to arrive at a rate of USD 0.22/kg to use as the surrogate value for ocean freight for shipments to the West Coast. As none of the respondents made shipments to the East Coast, no other rate is necessary. Subsequent to the Preliminary Results, Sunny submitted rates obtained from the Descartes database for refrigerated containers for three months of the POR for shipments from Qingdao, PRC, to the west coast of the United States (see May 24, 2004, submission). The rate quotes in the May 24, 2004, submission are for refrigerated shipments of "Fresh/Chilled Vegetables."

Because we do not have access to the Descartes database, we have no knowledge of how information is retrieved from the database. A check of the Descartes website (<http://www.etransport.com/rates/etinfo.html>) states that the database offers access to rates for more than 5,000 organizations. See Memorandum from Susan Lehman to The File titled "Factors Valuations for the Final Results of the New Shipper Reviews," dated July 26, 2004. As the respondents' submission refers only to "freight forwarder" and does not include the name of the freight forwarder, we are unable to investigate the rates further or determine whether they are representative of the range of

rates available from the database.

Because we cannot determine the representativeness of the rate quotes from the Descartes database, we determine that the rate used in the Preliminary Results the most accurate rate available and selected it as the surrogate value for shipments to the west coast.

Comment 4: Fixed Overhead Calculation

In its case brief Dong Yun cites to its May 3, 2004, letter addressing clerical errors and the petitioners' May 10, 2004, letter to the Department responding to Dong Yun's clerical error allegations. Dong Yun argues that the Department calculated its factory overhead (hereafter referred to as fixed overhead) incorrectly for the Preliminary Results. Dong Yun asserts that the fixed overhead ratio should be applied to a cost build-up that excludes packing expenses and is adjusted for sprout revenue. Dong Yun refers to the petitioners' claim in their May 10, 2004, submission that Dong Yun's correction to the alleged clerical error would result in double-counting the offset for garlic sprouts. It asserts that the petitioners' claim has no merit. Dong Yun also argues that by their silence in the response to the clerical error allegation, the petitioners implicitly agree with Dong Yun's argument pertaining to packing expenses.

The respondent asserts that fixed overhead should be calculated as a percentage of the cost of manufacture and contends that the cost of manufacture is normally defined as the addition of direct materials, direct labor, and energy, minus by-product. Dong Yun argues that because the calculated financial ratios are based on values excluding energy, the build-up for the cost of manufacture to which the financial ratios are applied should exclude packing expenses, include direct materials and direct labor, and be offset for sprout revenue.

Department's Position: We agree with the respondent that the build-up of the cost to which the financial ratios are applied should exclude packing expenses. For the final results of these reviews, in calculating the amount of overhead included in the cost of production, we have determined not to apply the surrogate financial ratios to production costs that include packing expenses. As in the Preliminary Results, however, we have calculated separate surrogate values for materials and labor associated directly with packing fresh garlic from the PRC and added these packing expenses to the calculation of normal value. For a more detailed discussion of this issue, see Comment 1 above.

We disagree with the respondent that for the Preliminary Results the Department made a clerical error by not adjusting the fixed overhead production costs for sprout revenue before applying the financial ratios. For these reviews, we used the production costs from Parry Agro's financial statements to calculate overhead, SG&A, and profit ratios. After a careful review of the surrogate company financial statements, we find that Parry Agro does not have by-product revenues. As such, there is no possibility for Parry Agro to reduce its cost of production for any by-product revenue.

When we calculated the overhead rate from Parry Agro's income statement, we only included the direct material and direct labor costs in the denominator. The amount to which the ratio is applied must be on the same basis as the denominator used to calculate the ratio. To do otherwise would misstate the results. In the Preliminary Results, to account for the sprouts revenue received by respondents, the Department subtracted from the sum of overhead, total materials, labor, and energy the sprouts revenue in order to derive the total cost of manufacture. Our treatment of the sprouts revenue as a by-product by offsetting it against total cost of manufacture rather than subtracting it from material costs prior to deriving factory overhead is consistent with the Department's methodology in

other antidumping duty proceedings. See Certain Preserved Mushrooms From the People's Republic of China: Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review, 68 FR 41304 (July 11, 2003). See also, Titanium Sponge from the Russian Federation, Notice of Final Results of Antidumping Duty Administrative Review, 61 FR 58525 (November 15, 1996). Therefore, for the final results we have not made a change and applied the overhead rate to the sum of direct material and direct labor.

Comment 5: Selling, General and Administrative Expenses and Profit Calculation

Dong Yun argues that the SG&A and profit ratio should be applied to a cost build-up that excludes packing expenses and is offset for sprout revenue. Further, Dong Yun asserts that profit should be calculated as a percentage of the sum of total cost of manufacture (adjusted for energy and excluding packing expenses and sprouts revenue) and SG&A.

Department's Position: As we stated in the Department's position at Comment 4 above, we agree with the respondent that the cost build-up to which the financial ratios are applied should exclude packing expenses. For the final results of these reviews, in calculating the amount of SG&A and profit included in normal value, we have determined not to apply the SG&A and profit ratios to production costs that include packing expenses. For a more detailed discussion of this issue see Comment 1 above.

We disagree with the respondent that the cost build-up to which the SG&A and profit ratios are applied should be offset for sprout revenue. In calculating the SG&A and profit ratios from Parry Agro's income statement, the denominators used to calculate these ratios were not offset for by-product revenue. Further, the total cost of production of the subject merchandise

has been calculated after being offset for the by-product revenue (i.e., sprout revenue). As we stated in the Department's position to Comment 4 above, the amount to which the 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 and profit ratios to cost amounts that are not offset for by-product (sprout) revenue.

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 margins for all of the reviewed firms in the Federal Register.

Agree _____

Disagree _____

James J. Jochum
Assistant Secretary
for Import Administration

Date