

"grows and sells garlic." It provided no description of the sales process between Kima and Hongda other than to say that it "simply purchased the garlic" from Kima. It stated further that Kima had packed the garlic in the same manner that Hongda had packed its self-produced garlic and that Kima had shipped the garlic directly to the port of export from its processing facility. It declined to revise its section D narrative responses on the basis that Kima shipped the processed garlic directly to the port. It stated, however, that the factor for indirect labor included labor Kima used for processing and packaging the garlic.

We issued another supplemental questionnaire to Hongda on January 3, 2003. We asked Hongda to resolve any inconsistencies and contradictions in its comments and questionnaire responses concerning the processing and packaging of the garlic that it purchased from Kima. We again asked for a step-by-step description of its purchase of the garlic from Kima. We asked that, in the description, Hongda identify the party performing each processing step. In light of its December 2, 2002, response, we asked for information about the supplier's knowledge of the ultimate destination of the merchandise. We requested that Hongda forward section D and appendices of our original questionnaire to Kima so that Kima could respond. Finally, we asked for additional detailed information concerning the factor for the amount of garlic purchased from Kima and the indirect labor factor.

In its January 27, 2003, response to the supplemental questionnaire, Hongda essentially undermined the validity of its December 2, 2002, response. It stated that the earlier response was incorrect and that Hongda took possession of the garlic from Kima before its export to the United States. It stated that it performed "further packing" on the garlic in which it incurred labor costs before the merchandise was shipped to the United States. Hongda also stated that Kima was unwilling to provide details on its production process or its factors of production. In support of its response, Hongda submitted a certification from Kima to the effect that it was "unable" to provide the requested information. There was no explanation about why Kima was "unable" to provide the requested information. Hongda provided an overview of its calculation for the indirect labor factor but did not identify specific tasks and allocate amounts to the tasks as we had requested in our supplemental questionnaire.

On March 14, 2003, we issued a questionnaire directly to Kima, requesting that it respond to the section D questionnaire. The company did not respond to our request.

Hongda has requested a new shipper review and submitted information to the Department with the expectation that the Department will calculate a dumping margin on its reported sales, despite the fact that it has not provided key information regarding the production and sales-process data for those transactions. Despite its many opportunities to clarify the record, Hongda and its supplier have failed to provide necessary information to the Department. Without a complete response to its requests for information, the Department cannot calculate an accurate dumping margin on Hongda's sales of merchandise to the United States. This is particularly true in this case, given that the overwhelming majority of Hongda's exports to the United States were of subject merchandise produced by Kima.

In a review involving an NME, the factors of production are crucial to determining normal value. As the Department has stated clearly in its recent Policy Bulletin covering new shipper reviews in general (found on the Department's Web site at <http://ia.ita.doc.gov>), it is the responsibility of the party requesting a new shipper review to provide all of the information necessary to the Department for initiating the new shipper review. It is furthermore the responsibility of the party requesting a new shipper review to provide the Department with the necessary information for it to calculate an accurate dumping margin. In other words, if a party desires to receive the benefits of a new shipper review, it has an affirmative obligation to provide the Department with the information necessary to calculate the new shipper dumping margin. This is particularly acute in NME cases, in which, absent complete factors-of-production information, the Department cannot calculate an accurate dumping margin.

Section 776(a)(2) of the Tariff Act of 1930, as amended (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 section 782(d) of the Act, use the facts

otherwise available in reaching the applicable determination.

Because Hongda did not provide the Department with the information necessary to calculate a margin on the overwhelming majority of its sales, because it did not provide an explanation as to why it could not provide the information for those sales, and because Kima, an "interested party" to these transactions, did not provide the requested information, we preliminarily determine that the use of facts otherwise available is warranted to calculate a margin for all of Hongda's sales of subject merchandise during the POR.

Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority" if (1) the information is submitted by the deadline established for its submission, (2) the information can be verified, (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination, (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department with respect to the information, and (5) the information can be used without undue difficulties.

For the Department to calculate an accurate margin in an NME proceeding, it needs valid factors of production. Hongda and Kima failed to provide the factors-of-production information for the Kima/Hongda transactions. The Kima/Hongda transactions vastly eclipse the Hongda/Hongda transactions as a percentage of Hongda's POR sales. Therefore, we find that the submitted data is so incomplete that reliance on it would not result in an accurate measurement or reflection of Hongda's selling practices.

Further, as detailed above, Hongda and Kima had ample time to submit the requested production process information and factors-of-production data for this new shipper review, but they failed to do so. Hongda, with the cooperation of Kima, requested the new shipper review in this case. Their failure to provide the necessary information on the record is therefore a strong indication that they did not act to the best of their ability in providing the Department with the necessary information to calculate a margin.

Finally, calculating a normal value using the incomplete factors-of-production information submitted by