



A-570-831
Administrative Review
11/1/2010-10/31/2011
Public Document
06: DL

December 3, 2012

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

FROM: Christian Marsh *CM*
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results of the 2010-
2011 Antidumping Duty Administrative Review: Fresh Garlic
from the People's Republic of China

SUMMARY

In response to requests from interested parties, the Department of Commerce (Department) is conducting an administrative review (AR) of the antidumping (AD) duty order on fresh garlic from the People's Republic of China (PRC) covering the period of review (POR) of November 1, 2010, through October 31, 2011. This review covers two respondents, Hebei Golden Bird Trading Co., Ltd. (Golden Bird) and Shenzhen Xinboda Industrial Co., Ltd. (Xinboda). The Department preliminarily finds that these two respondents sold subject merchandise to the United States at prices below normal value (NV).

If these preliminary results are adopted in our final results of review, the Department will instruct U.S. Customs and Border Protection (CBP) to assess AD duties on all appropriate entries of subject merchandise during the POR. The Department preliminarily grants a separate rate to five companies which demonstrated eligibility for separate rate status. The rates assigned to each of these companies can be found in the "Preliminary Results of Review" section of the accompanying preliminary results Federal Register notice. The Department also preliminarily determines that five companies made no shipments.

Interested parties are invited to comment on these preliminary results. We will issue final results no later than 120 days from the date of publication of this notice pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).



BACKGROUND

On November 16, 1994, the Department published the AD duty order on fresh garlic from the PRC.¹ On November 1, 2011, the Department published a notice of opportunity to request an AR of the AD duty order on fresh garlic from the PRC for the POR of November 1, 2010, through October 31, 2011.² On November 29 and 30, 2011, Petitioners³ and seven other interested parties filed requests for the Department to initiate an AR.⁴ Accordingly, on December 21, 2011, the Department initiated this AR with respect to 120 companies.⁵ On June 11, 2012, the Department rescinded the AR for 100 companies which had their request for review withdrawn after the publication of the Initiation, in accordance with 19 CFR 351.213(d)(1).⁶ The Department, on July 10, 2012, fully extended the deadline of these preliminary results.⁷ As explained in the memorandum from the Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal government from October 29, through October 30, 2012. Thus, all deadlines in this segment of the proceeding have been extended by two days. The revised deadline for the preliminary results of this review is now December 3, 2012.⁸

In January 2012, five parties submitted “no shipment” certifications that attested to the fact that they had no entries of subject merchandise during the POR. Specifically, these companies are: (1) Chengwu County Yuanxiang Industry & Commerce Co., Ltd. (Chengwu); (2) Farmlady; (3) Jinxiang Chengda Import & Export Co., Ltd. (Chengda); (4) Jinxiang Hejia Co., Ltd. (Hejia);

¹ See Antidumping Duty Order: Fresh Garlic From the People’s Republic of China, 59 FR 59209 (November 16, 1994).

² See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review, 76 FR 67413 (November 1, 2011).

³ Petitioners are the Fresh Garlic Producers Association and its individual members: Christopher Ranch L.L.C., The Garlic Company, Valley Garlic, and Vessey and Company, Inc.

⁴ See Jinan Farmlady Trading Co., Ltd. (Farmlady) November 29, 2011 Request for AR; see also Weifang Hongqiao International Logistics Co., Ltd. (Hongqiao) November 29, 2011 Request for AR; Qingdao Sea-line International Trading Co., Ltd. (Sea-line) November 29, 2011 Request for AR; Shandong Jinxiang Zhengyang Import and Export Co., Ltd. (Zhengyang) November 30, 2011 Request for AR; Qingdao Maycarrier Import and Export Co., Ltd. (Maycarrier) November 30, 2011 Request for AR; Xinboda November 30, 2011 Request for AR; Petitioners November 30, 2011 Request for AR; and Zhengzhou Harmoni Spice Co. Ltd. November 30, 2011 Request for AR. Maycarrier’s request proposed that if the Department initiated a new shipper review (NSR) for Maycarrier, it would withdraw its request for a review in this instant case. As the Department determined it would initiate the requested NSR for Maycarrier, the Department considered Maycarrier’s initiation request withdrawn and did not include Maycarrier in the Initiation. See Fresh Garlic From the People’s Republic of China: Initiation of New Shipper Reviews, 77 FR 266 (January 4, 2012).

⁵ See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 76 FR 82268 (December 30, 2011) (Initiation).

⁶ See Fresh Garlic From the People’s Republic of China: Partial Rescission of the 2010–2011 Antidumping Duty Administrative Review, 77 FR 36480 (June 19, 2012) (Garlic 17 Partial Rescission).

⁷ See Memorandum to Christian Marsh regarding “Fresh Garlic from the People’s Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,” dated July 10, 2012. This extended the deadline for these preliminary results to November 29, 2012.

⁸ See Memorandum to the Record from Paul Piquado, AS for import Administration, regarding “Tolling of Administrative Deadlines As a Result of the Government Closure During Hurricane Sandy,” dated October 31, 2012. This tolling pushed the deadline of these preliminary results to December 1, 2012 but, as this date falls on a weekend, the deadline is the first business day following the weekend. Accordingly, the deadline for these preliminary results is December 3, 2012.

and (5) Sea-line. Subsequently, in February 2012, the following companies timely submitted separate rate status certifications or applications: (1) Golden Bird; (2) Xinboda; (3) Qingdao Xintianfeng Foods Co., Ltd. (QXF); (4) Zhengyang; and (5) Hongqiao. Petitioners filed a timely request on April 9, 2012, that the Department conduct verification for this review. On April 12, 2012, the Department selected the two largest exporters by volume, Golden Bird and Xinboda, as mandatory respondents.⁹ Following the selection of the mandatory respondents, the Department issued a questionnaire (Initial Questionnaire) to each of the selected mandatory respondents on April 13, 2012.

Golden Bird and Xinboda filed their responses to Section A of the Initial Questionnaire on May 17, 2012, and on June 1, 2012, filed their responses to the remaining sections of the questionnaire. On August 7, 2012, the Department issued supplemental questionnaires to both Golden Bird and Xinboda. Both companies filed their responses on September 4, 2012. On October 24, 2012, Petitioners filed comments regarding the September 4, 2012, supplemental questionnaire responses filed by both Golden Bird and Xinboda. In response, Golden Bird filed rebuttal comments on November 8, 2012.

On April 4, 2012, the Department placed the Surrogate Country List on the record and solicited interested parties to submit comments regarding the selection of the surrogate country (SC) as well as provide surrogate values (SVs).¹⁰ Petitioners placed information on the record regarding the selection of SVs on May 18, 2012. On May 23, 2012, Golden Bird filed comments regarding Petitioners' submission. Subsequently, Petitioners, Golden Bird and Xinboda all filed SC comments and SV information on July 17, 2012. On July 25, 2012, Petitioners filed a supplement to their July 17, 2012, submission. Petitioners, Golden Bird, Xinboda, Hongqiao, Sea-line, and Farlady filed rebuttal comments to the July 17, 2012 and July 25, 2012 SC/SV submissions on August 10, 2012.

SCOPE OF THE ORDER

The products covered by the order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay. The scope of the order does not include the following: (a) garlic that has been mechanically harvest and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed. The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the Harmonized Tariff Schedule of the United States (HTSUS).

⁹ See Memorandum to Barbara E. Tillman regarding "Antidumping Administrative Review of Fresh Garlic from the People's Republic of China: Respondent Selection," dated April 12, 2012 (Respondent Selection Memorandum).

¹⁰ See Letter to All Interested Parties regarding "Fresh Garlic from the People's Republic of China: Surrogate Countries Selection and Surrogate Value Information," dated April 4, 2012 (Surrogate Country List).

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive. In order to be excluded from the order, garlic entered under HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declaration to CBP to that effect.

DISCUSSION OF THE METHODOLOGY

Non-Market Economy Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a non-market economy (NME) country.¹¹ In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment. Accordingly, the Department calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

Preliminary Determination of No Shipments

As noted above, Chengwu, Farmlady, Chengda, Hejia and Sea-line timely-filed certifications indicating that they did not have any exports of subject merchandise during the POR. On July 13, 2012, the Department transmitted “no shipment” inquiries to CBP for these five companies that certified no shipments of subject merchandise during the POR. CBP did not respond to these “no shipment” inquiries with any evidence that is contradictory to these companies’ claims of no shipments. Based on the certifications filed by these companies and our analysis of CBP information, we preliminarily determine that these companies did not have any reviewable transactions during the POR. In addition, the Department finds that, consistent with its recently announced refinement to its assessment practice in NME cases, it is appropriate not to rescind the review in part in these circumstances but, rather, to complete the review with respect to the five companies and issue appropriate instructions to CBP based on the final results of the review.¹²

Separate Rates

Designation of a country as an NME remains in effect until it is revoked by the Department.¹³ Accordingly, in proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the PRC are subject to government control and, thus,

¹¹ See, e.g., Fresh Garlic From the People’s Republic of China: Preliminary Results of the 2009–2010 Antidumping Duty Administrative Review, 76 FR 76375 (December 7, 2011), unchanged in Fresh Garlic from the People’s Republic of China: Final Results of the 2009–2010 Administrative Review of the Antidumping Duty Order, 77 FR 34346 (June 11, 2012)(09-10 Garlic Final).

¹² See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties, 76 FR 65694 (October 24, 2011).

¹³ See section 771(18)(C)(i) of the Act.

should be assessed a single AD duty rate.¹⁴ It is the Department's standard policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (de jure) and in fact (de facto), with respect to its exports. To establish whether a company is sufficiently independent to be eligible for a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in Sparklers¹⁵ and further clarified in Silicon Carbide.¹⁶ However, if the Department determines that a company is wholly foreign-owned or located in a market economy (ME), then a separate-rate analysis is not necessary to determine whether it is independent from government control.

In order to demonstrate separate-rate status eligibility, the Department normally requires entities, for whom a review was requested, and who were assigned a separate rate in a previous segment of this proceeding, to submit a separate-rate certification stating that they continue to meet the criteria for obtaining a separate rate.¹⁷ For entities that were not assigned a separate rate in the previous segment of a proceeding, to demonstrate eligibility, the Department requires a separate-rate application.¹⁸

In this AR, only Golden Bird, Xinboda, QXF, Zhengyang and Hongqiao certified their eligibility for separate rate status through a separate rate certification or application. Each company reported that it is a wholly Chinese-owned company. Therefore, the Department must analyze whether each company can demonstrate the absence of both de jure and de facto government control over export activities.

A. Absence of De Jure Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.¹⁹

Golden Bird, Xinboda, QXF, and Hongqiao each certified that, consistent with the most recently completed segment of this proceeding in which it participated and was granted a separate rate, there is an absence of de jure government control of its exports.²⁰ Additionally, Zhengyang

¹⁴ See, e.g., Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 75 FR 24892, 24899 (May 6, 2010), unchanged in Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 59217 (September 27, 2010).

¹⁵ See Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588 (May 6, 1991) (Sparklers).

¹⁶ See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994) (Silicon Carbide).

¹⁷ See Initiation, 76 FR at 82269.

¹⁸ Id.

¹⁹ See Sparklers.

²⁰ Golden Bird, Xinboda and QXF most recently participated in and were granted separate rates in 09-10 Garlic Final. The most recent complete segment in which Hongqiao participated and received a separate rate was Fresh

submitted a separate rate application which provided detailed information regarding the company's operations.²¹ Throughout the course of this proceeding, Golden Bird, Xinboda and Zhengyang have placed documentation on the record to demonstrate absence of de jure control including business licenses, financial statements, and narrative information regarding government laws and regulations on corporate ownership and the companies' operations and selection of management. In addition, Golden Bird, Xinboda and Zhengyang have placed on the record copies of certain laws and regulations, including the "Company Law of the People's Republic of China," the "Foreign Trade Law of the PRC," and "Regulation of the PRC on the Administration of Company Registration."²² The Department has analyzed these PRC laws and found that they establish an absence of de jure control;²³ we have no information in this proceeding that would cause us to reconsider this determination regarding the PRC laws.

Likewise, for QXF and Hongqiao, the companies certified that, as with the previous segment of the proceeding in which each firm was granted a separate rate, (1) there were no government laws or regulations that controlled each firm's export activities; (2) the ownership under which the firm registered itself with the official government business license issuing authority remains the same; (3) the firm had a valid Registration Form for Foreign Trade Enterprise (previously known as a "PRC Export Certificate of Approval"); (4) in order to conduct export activities, the firm was not required by law or regulation at any level of government to possess additional certificates or other documents related to the legal status and/or operation of its business beyond those discussed above; and (5) PRC government laws and legislative enactments applicable to these companies have not changed.

Thus, we determine that the evidence on the record supports preliminarily finding an absence of de jure government control of Golden Bird, Xinboda, QXF, Hongqiao and Zhengyang on: (1) an absence of restrictive stipulations associated with the exporter's business license; (2) the existence of legislative enactments legal authority on the record decentralizing control over the respondent; and (3) other formal measures by the government decentralizing control of companies.

B. Absence of De Facto Control

As stated in previous cases, there is evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC.²⁴ Therefore, the Department has determined that an analysis of de facto control is critical in determining whether Golden Bird, Xinboda, QXF, Hongqiao and Zhengyang are, in

Garlic From the People's Republic of China: Final Results and Final Rescission, in Part, of the 2008-2009 Antidumping Duty Administrative Review, 76 FR FR 37321 (June 27, 2011).

²¹ See Letter from Zhengyang regarding "Fresh Garlic from People's Republic of China, Antidumping Duty: Separate Rates Application," dated February 24, 2012.

²² See Golden Bird's May 18, 2012 Section A Questionnaire Response at Exhibit A-4; see also Xinboda's May 17, 2012 Section A Questionnaire Response at Exhibit A-2.

²³ See, e.g., Honey from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 72 FR 102, 105 (January 3, 2007), unchanged in Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review, 72 FR 37715, 37716 (July 11, 2007).

²⁴ See, e.g., Silicon Carbide, 59 FR at 22586-87.

fact, subject to a degree of government control over export activities which would preclude the Department from assigning separate rates.

The Department's decision finding an absence of de facto governmental control over exports is based on whether a company: (1) sets its own export prices independent of the government and other exporters; (2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) has the authority to negotiate and sign contracts and other agreements; and (4) has autonomy from the government regarding the selection of management.²⁵

For Golden Bird, Xinboda, QXF, Hongqiao and Zhengyang, we determine that the evidence on the record supports a preliminary finding of de facto absence of government control based on the company's certifications and supporting documentation that: (1) each respondent sets its own export prices independent of the government and without the approval of a government authority; (2) each respondent retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) each respondent negotiates and signs contracts and other agreements without guidance from government entities or organizations; and (4) each respondent makes its own personnel and management decisions autonomous from the government.²⁶

The evidence placed on the record of this review by Golden Bird, Xinboda, QXF, Hongqiao and Zhengyang demonstrates an absence of de jure and de facto government control with respect to each company's respective exports of the merchandise under review, in accordance with the criteria identified in Sparklers and Silicon Carbide. Therefore, we are preliminarily granting Golden Bird, Xinboda, QXF, Hongqiao and Zhengyang each a separate rate.

Separate Rate for Non-Selected Companies

In accordance with section 77A(c)(2)(B) of the Act, the Department employed a limited examination methodology, as it did not have the resources to examine all companies for which a review request was made. We selected Golden Bird and Xinboda as the mandatory respondents in this review.²⁷ As discussed above, QXF, Hongqiao and Zhengyang are exporters of subject merchandise from the PRC that have demonstrated their eligibility for a separate rate but which were not selected for individual examination in this review. The statute and the Department's regulations do not directly address the establishment of a rate to be applied to individual companies not selected for individual examination where the Department limited its examination in an AR pursuant to section 777A(c)(2) of the Act. The Department's practice in cases involving limited selection based on exporters accounting for the largest volumes of trade has been to look to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate using any zero or de minimis margins or any margins based entirely on facts available. Section 735(c)(5)(B) of the Act also provides that, where all margins

²⁵ Id.; see also Sparklers, 56 FR at 20589; Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China, 60 FR 22544, 22545 (May 8, 1995).

²⁶ See Golden Bird's May 18, 2012 Section A Questionnaire Response; see also Xinboda's May 17, 2012 Section A Questionnaire Response.

²⁷ See Respondent Selection Memorandum.

are zero rates, de minimis rates, or rates based entirely on facts available, we may use “any reasonable method” for assigning the rate to non-selected respondents. In this instance, we have calculated rates above de minimis for both Golden Bird and Xinboda.

Accordingly, for the preliminary results, consistent with the Department’s practice, the Department has preliminarily determined that the margin to be assigned to the separate rate recipients should be a simple average of the two margins calculated for mandatory respondents Golden Bird and Xinboda.²⁸

PRC-Wide Entity

As noted above, 20 companies continue to be subject to this review.²⁹ Of those 20, five have demonstrated eligibility for separate rate status and five additional companies have certified that they had no shipments of subject merchandise during the POR. Accordingly, we have preliminarily determined that the remaining ten companies did not demonstrate their eligibility for a separate rate and should be considered part of the PRC-wide entity.³⁰ As explained above in the “Separate Rates” section, all companies within the PRC are considered to be subject to government control unless they are able to demonstrate an absence of government control with respect to their export activities. Such companies are thus assigned a single AD rate distinct from the separate rate(s) determined for companies that are found to be independent of government control with respect to their export activities. We consider the influence that the government has been found to have over the economy to warrant determining a rate for the entity that is distinct from the rates found for companies that have provided sufficient evidence to establish that they operate freely with respect to their export activities.³¹

Surrogate Country

A. Level of Economic Development

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production (FOPs), valued in a surrogate ME country, or countries, considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that

²⁸ See Multilayered Wood Flooring From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 76 FR 64318 (October 18, 2011).

²⁹ On June 11, 2012, the Department issued a partial rescission notice, which rescinded the instant review for 100 companies which had their request for reviews timely withdrawn. As noted though, for those companies subject to the PRC-wide entity, they will continue to be part of the administrative review due to the fact that the PRC-wide rate may be subject to changes. See Garlic 17 Partial Rescission. Once the final PRC-wide rate is issued in the final results of the instant review, the Department will issue liquidation instructions for all companies that are part of the PRC-wide entity.

³⁰ These companies are: Foshan Fuyi Food Co., Ltd.; Henan Weite Industrial Co., Ltd.; Jining Yongjia Trade Co., Ltd.; Qingdao Tiantaixing Foods Co., Ltd.; Shandong Chenhe Intl Trading Co., Ltd.; Shanghai LJ International Trading Co., Ltd.; Sunny Import & Export Limited; Yantai Jinyan Trading Co., Ltd.; Zhengzhou Huachao Industrial Co., Ltd.; and Zhengzhou Yuanli Trading Co., Ltd.

³¹ See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People’s Republic of China, 71 FR 53079, 53082 (September 8, 2006).

are (a) at a level of economic development comparable to that of the NME country and (b) are significant producers of comparable merchandise. Moreover, it is the Department's practice to select an appropriate SC based on the availability and reliability of data from the countries.³²

Pursuant to section 773(c)(4) of the Act, the Department determined that Colombia, Indonesia, Peru, the Philippines, South Africa, Thailand, and Ukraine are countries comparable to the PRC in terms of economic development.³³ Section 773(c)(4)(A) of the Act is silent with respect to how the Department may determine that a country is economically comparable to the NME country. As such, the Department's long standing practice has been to identify those countries which are at a level of economic development similar to the PRC in terms of gross national income (GNI) data available in the World Development Report provided by the World Bank.³⁴ In this case, the GNI available are based on data published in 2010, with the GNI levels for the list of potential surrogate countries ranging from \$2,050 to \$6,100.³⁵ The Department is satisfied that they are equally comparable in terms of economic development and serve as an adequate group to consider when gathering SV data. Further, providing parties with a range of countries with varying GNIs is reasonable given that any alternative would require a complicated analysis of factors affecting the relative GNI differences between the PRC and other countries, which is not required by the statute. In contrast, by identifying countries that are economically comparable to the PRC based on GNI, the Department provides parties with a predictable practice which is reasonable and consistent with the statutory requirements. We note that identifying potential surrogate countries based on GNI data has been affirmed by the U.S. Court of International Trade (CIT).³⁶ As the Department's policy is to consider all countries on the SC list to be equally comparable economically to the PRC, we did not use GNI alone as the rationale for selecting among these seven countries. Instead, as further discussed below, we evaluated which of these countries is also a significant producer and has reliable data.

B. Significant Producers of Comparable Merchandise

When considering whether any of the countries contained in the Surrogate Country List are also significant producers of comparable merchandise, the Department relied on the 2010 United Nations Food and Agriculture Organization (FAO) production data for fresh garlic placed on the record in this proceeding by Petitioners, Golden Bird and Xinboda.³⁷ The production data placed on the record of this review for the seven countries on the Surrogate Country List indicates that domestic production levels are as follows:

³² See Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin No. 04.1).

³³ See Surrogate Country List.

³⁴ See, e.g., Pure Magnesium from the People's Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review of the Antidumping Duty Order, 75 FR 80791 (December 23, 2010) and accompanying Issues and Decision Memorandum at Comment 4.

³⁵ See Surrogate Country List.

³⁶ See Fujian Lianfu Forestry Co., Ltd. v. United States, 638 F. Supp. 2d 1325 (CIT 2009).

³⁷ See Petitioners' July 17, 2012 SC/SV Submission at Exhibit C-1; see also Golden Bird's July 17, 2012 SC/SV Submission at Exhibit 1; Xinboda's July 17, 2012 SC/SV Submission at Exhibit 1.

Economically-Comparable Countries	Garlic Production (MTs)
Ukraine	157,400
Thailand	68,108
Peru	62,962
Indonesia	12,341
Philippines	9,563
Colombia	3,351
South Africa	0

This production data indicates that six of the seven countries on the Surrogate Country List are significant producers of comparable merchandise. As Colombia, Indonesia, Peru, the Philippines, Thailand, and Ukraine are both economically comparable and significant producers of comparable merchandise, we have considered them as potential SCs. South Africa had no garlic production. Consequently, the Department does not consider the country a significant producer and therefore will not consider any SVs from South Africa.

Additionally, some interested parties have made arguments that, consistent with past reviews for the order of fresh garlic from the PRC, the Department should consider using India as the surrogate country. It is the Department's policy that it will only depart from the countries on the Surrogate Country List if we find that none of the countries in the list are significant producers or if there are issues regarding the availability of SVs from the countries on the list. In this case, the Department has determined that six of the seven countries on the Surrogate Country List are significant producers of fresh garlic and interested parties have submitted possible SVs for all FOPs. As such, the Department has not considered India or Indian SVs submitted in this review.

C. Data Considerations

After evaluating economic comparability and significant production of comparable merchandise, if more than one country remains, it is the Department's practice to select an appropriate SC based on the availability and reliability of data from those countries.³⁸ In determining this case, we looked at the availability of information regarding the most significant FOPs. As in prior proceedings of this order, raw garlic bulb inputs are the most significant input because it accounts for the largest percentage of NV as fresh garlic (both whole and peeled) is produced directly from the raw garlic bulb. As such, we must consider the availability and reliability of the SVs for raw garlic bulb on the record. The Department has received possible SVs for raw garlic bulb input values from all six of the countries that are both economically comparable and are significant producers of comparable merchandise. Accordingly, the Department has determined that we must go one step farther in the evaluation of the data by looking at information which would indicate which country produces garlic which is most similar to that produced in the PRC. This would include an evaluation of any information regarding the general garlic produced in the country such as the growing conditions and physical characteristics of the varieties grown in the country.

³⁸ See Policy Bulletin No. 04.1.

The Department only received submissions regarding the characteristics of garlic produced in Ukraine and Thailand. Petitioners provided data and information from “Ukrainian Agricultural Sector,” an agricultural information portal supported by the National University of Life and Environmental Sciences of Ukraine which offers detailed information regarding garlic varieties produced in Ukraine.³⁹ Xinboda submitted to the Department five Alibaba.com (Alibaba) company advertisements for Thai garlic. Of the advertisements for garlic from Thai companies, four indicate that the garlic they are selling has similar characteristics to that produced in the PRC.⁴⁰ As there is no information to evaluate the characteristics of garlic produced by the other countries on the Surrogate Country List, we have narrowed the selection of a primary SC for this review to Ukraine and Thailand.

A review of the information regarding garlic grown in Ukraine indicates that the garlic produced in the country is similar to the garlic produced in the PRC. Specifically, the majority of garlic grown in Ukraine is large (*i.e.*, 50-55 mm) and white, similar to the garlic produced in the PRC.⁴¹ Additionally, the record indicates that garlic grown in Ukraine and the PRC experience similar growing conditions.⁴² As stated above, the data regarding the characteristics of garlic from Thailand is contained within the offers posted on Alibaba by four Thai companies selling garlic.⁴³ While these offers provide a range of sizes that are within the sizes reportedly consumed by respondents, there is no indication that these offers are in any way reflective of the overall Thai garlic industry (*i.e.*, no indication these sizes are typical of Thai garlic). The offers also provide little insight into other characteristics of the Thai garlic (*i.e.*, growing conditions, varieties, colors) which the Department has previously determined are important to ensure that the raw garlic bulb inputs are similar to those consumed by respondents.

As noted above, the Department finds that one of the five Alibaba garlic advertisements does not indicate that Thai garlic is similar to Chinese garlic. This is because the fifth Alibaba offer for Thai garlic (posted by Sunisau Food Products Ltd) clearly states that the garlic is coming from the port of Qingdao, a city in the PRC that is a gateway for Chinese garlic exports.⁴⁴ Further, the offer states a capacity to ship 2,000 metric tons of fresh garlic per month, or 24,000 metric tons annually.⁴⁵ This quantity, reflected in a single offer for sale, would involve a total annual shipment quantity that is greater than 35 percent of Thailand's total 2010 domestic production of garlic, as reported by the FAO.⁴⁶ This clearly undermines the reliability of that specific Alibaba advertisement as it calls into question the validity of whether the merchandise in the offer actually involves fresh garlic produced from Thailand, or rather fresh garlic that is produced in the PRC and re-exported (or transshipped) from Thailand. Thus, while the Ukrainian information regarding garlic production includes reliable research and information which clearly demonstrate the similarities between Ukrainian and Chinese garlic, the Thai offers only indicate that garlic for sale by four companies may be similar in size and color, but provide no additional insight into similarities of garlic type or growing conditions.

³⁹ See Petitioners’ July 17, 2012 SC/SV Submission at Exhibit C-3.

⁴⁰ See Xinboda’s July 17, 2012 SC/SV Submission at Exhibit 18.

⁴¹ See, *e.g.*, Petitioners’ November 13, 2012 SC/SV Comments at 4-6.

⁴² See, *e.g.*, Petitioners’ July 17, 2012 SC/SV Submission at 7.

⁴³ See Xinboda’s July 17, 2012 SC/SV Submission at Exhibit 18.

⁴⁴ *Id.* at 1 (listing for “port”).

⁴⁵ *Id.*

⁴⁶ *Id.*

When the Department relies on data considerations for the selection of the SC, the Department focuses on the availability and reliability of the data. While the Thai advertisements from Alibaba clearly indicate that the size of garlic they are offering is similar in size and color to that consumed by the respondents, they provide no information which lends a greater understanding of the general Thai garlic industry. Additionally, there is no information included in the Alibaba advertisements which might indicate that they are in any way a reliable source of information regarding the Thai garlic industry generally. Alternatively, the information submitted regarding the Ukrainian garlic industry clearly demonstrates that the characteristics of garlic grown throughout the country are similar to the garlic grown in the PRC. This information is derived from reliable research sources and is not limited to specific companies or regions, as is the case with the Thai Alibaba offers. Accordingly, while the Alibaba offers provide some information regarding garlic from Thailand, the Ukraine evidence provides detailed information that is significantly more reliable than the Thai data and clearly demonstrates that the garlic grown in Ukraine is very similar to the garlic grown in the PRC. On this basis, we have preliminarily selected Ukraine as the SC for the instant review. While it is the Department's preference to rely on a single SC, we note that in those cases where a specific SV from Ukraine is missing or considered unreliable, the Department will consider SVs submitted from other countries included in the Surrogate Country List. The sources of the SVs are discussed under the "Normal Value" section below and in the Surrogate Values Memorandum.⁴⁷

Date of Sale

Golden Bird and Xinboda reported the invoice date as the date of sale.⁴⁸ The Department normally uses invoice date as date of sale, consistent with 19 CFR 351.401(i). The Department's regulation establishes a presumption for invoice date and the CIT has held that a party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to satisfy the Department that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.⁴⁹ In this review, the Department preliminarily determines that the invoice date, which is when material terms such as price and quantity are set, is the most appropriate date to use as the date of sale for both respondents in accordance with 19 CFR 351.401(i) and the Department's long-standing practice of determining the date of sale.⁵⁰

Fair Value Comparisons

To determine whether Golden Bird and Xinboda's sales of subject merchandise were made at less than NV, we compared the NV to individual export price (EP) transactions in accordance

⁴⁷ See Memorandum to the File "Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Surrogate Values for the Preliminary Results," dated December 3, 2012 (Surrogate Values Memorandum). The Department notes that beyond the SC and SVs submitted for Ukraine, possible SVs were only submitted from Thailand. Thus, the Department will evaluate SV data from Thailand in the case the SV data from Ukraine is unavailable or unreliable.

⁴⁸ See Golden Bird's June 1, 2012 Section C Questionnaire Response at C-11; see also Xinboda's June 1, 2012 Section C&D at C-6-7.

⁴⁹ See *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001).

⁵⁰ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10.

with section 777A(d)(2) of the Act as explained in the “Export Price” and “Normal Value” sections below.⁵¹

Export Price

In accordance with section 772(a) of the Act, EP is “the price at which subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States,” as adjusted under section 772(c) of the Act. For Golden Bird and Xinboda, we applied the EP methodology, in accordance with section 772(a) of the Act, for sales in which the subject merchandise was first sold prior to importation by the exporter outside the United States directly to an unaffiliated purchaser in the United States and for sales in which CEP was not otherwise indicated.

We calculated EPs for Golden Bird and Xinboda based on the prices to their unaffiliated purchasers in the United States. In accordance with section 772(c) of the Act, where appropriate, we deducted from the starting prices to the unaffiliated purchasers, the expenses for: foreign inland freight; international freight; brokerage and handling; marine insurance; warehousing; and U.S. customs duties. For the expenses that were either provided by an NME vendor or paid for using an NME currency, we used SVs as appropriate.⁵²

Normal Value

A. Methodology

Section 773(c)(1)(B) of the Act provides that the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME country and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department calculates NV using each of the FOPs that a respondent consumes in the production of a unit of the subject merchandise because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department’s normal methodologies. However, there are circumstances in which the Department will modify its standard FOP methodology, choosing to apply an SV to an intermediate input instead of the individual FOPs used to produce that intermediate input.⁵³

⁵¹ In these preliminary results, the Department applied the weighted-average dumping margin calculation method adopted in Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification, 77 FR 8101 (February 14, 2012). In particular, the Department compared monthly weighted-average EPs (or constructed export prices (CEPs)) with monthly weighted-average NVs and granted offsets for non-dumped comparisons in the calculation of the weighted average dumping margin.

⁵² See the “Factor Valuations” section below for details regarding the SVs for movement expenses.

⁵³ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People’s Republic of China, 68 FR 47538 (August 11, 2003), and accompanying Issues and Decision Memorandum at Comment 1 (citing Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms from the People’s Republic of China, 66 FR 31204 (June 11, 2001)).

The Department has previously found that garlic producers in the PRC do not generally track actual labor hours incurred for growing, tending, and harvesting activities and, thus, do not maintain appropriate records which would allow most, if not all, respondents to quantify, report, and substantiate this information.⁵⁴ In the 11th AR and NSRs, the Department also stated that “should a respondent be able to provide sufficient factual evidence that it maintains the necessary information in its internal books and records that would allow us to establish the completeness and accuracy of the reported FOPs, we will revisit this issue and consider whether to use its reported FOPs in the calculation of NV.”⁵⁵ In the course of this review, none of the respondents reported FOPs related to growing whole garlic bulbs. As such, for the reasons outlined in the Intermediate Input Methodology Memorandum, the Department is applying an “intermediate-product valuation methodology” to the respondents for which we are calculating an AD duty margin in these preliminary results.⁵⁶ Using this methodology, the Department calculated NV by starting with an SV for the garlic bulb (i.e., the “intermediate product”), adjusting for yield losses during the processing stages, and adding the respondents’ processing costs, which were calculated using their reported usage rates for processing fresh garlic.⁵⁷

B. Factor Valuations

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly-available information to value the FOPs. However, when a producer sources an input from an ME country and pays for it in an ME currency, the Department may value the FOP using the actual price paid for the input. In this case, Golden Bird and Xinboda did not report that any inputs were sourced from ME suppliers.

As the basis for NV, Golden Bird and Xinboda provided FOPs used in each of the stages for producing fresh garlic. The Department's general policy, consistent with section 773(c)(1) of the Act, is to value the FOPs that a respondent uses to produce the subject merchandise. To calculate NV, the Department valued the per-unit factor quantities reported by Golden Bird and Xinboda using publicly available Ukrainian SVs. To calculate NV, we multiplied the reported per-unit factor consumption rates by publicly-available SVs. In selecting the SVs, consistent with our past practice, we considered the quality of the data as well as: (1) broad market average; (2) public availability; (3) product specificity; (4) tax and duty exclusivity; and (5)

⁵⁴ See, e.g., Fresh Garlic from the People’s Republic of China: Final Results and Partial Rescission of the Eleventh Administrative Review and New Shipper Reviews, 72 FR 34438 (June 22, 2007) (11th AR and NSRs); Fresh Garlic from the People’s Republic of China: Final Results and Partial Rescission of the 12th Administrative Review, 73 FR 34251 (June 17, 2008); Fresh Garlic from the People’s Republic of China: Final Results and Rescission, In Part, of Twelfth New Shipper Reviews, 73 FR 56550 (September 29, 2008); and Fresh Garlic From the People’s Republic of China: Final Results and Partial Rescission of the 13th Antidumping Duty Administrative and New Shipper Reviews, 74 FR 29174 (June 19, 2009).

⁵⁵ See Fresh Garlic from the People’s Republic of China: Partial Rescission and Preliminary Results of the Eleventh Administrative Review and New Shipper Reviews, 71 FR 71510, 71520 (December 11, 2006) unchanged in the 11th AR and NSRs.

⁵⁶ See Memorandum to the File “Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China: Intermediate Input Methodology,” dated December 3, 2012 (Intermediate Input Methodology Memorandum).

⁵⁷ Id.

contemporaneity of the data.⁵⁸ As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to the input SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory, where appropriate. This adjustment is in accordance with the decision of the U.S. Court of Appeals for the Federal Circuit.⁵⁹ For those values not contemporaneous with the POR, we adjusted for inflation using data published in the International Monetary Fund's International Financial Statistics.

In accordance with the OTCA 1988 legislative history, the Department continues to apply its long-standing practice of disregarding SVs if it has a reason to believe or suspect the source data may be subsidized.⁶⁰ In this regard, the Department has previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea and Thailand because we have determined that these countries maintain broadly available, non-industry specific export subsidies. Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it is reasonable to infer that all exporters from India, Indonesia, South Korea, and Thailand may have benefitted from these subsidies. Additionally, we disregarded prices from NME countries as well as any imports that were labeled as originating from an “unspecified” country because the Department could not be certain that they were not from either an NME country or a country with general export subsidies.⁶¹ For more information regarding the Department’s valuation for the various FOPs, see Surrogate Values Memorandum.

Raw Garlic Bulb Input Valuation

As noted above, the raw garlic bulb input is the most significant input because it accounts for the largest percentage of NV as fresh garlic (both whole and peeled) is produced directly from the raw garlic bulb. As discussed above, the Department is applying an intermediate input methodology for Golden Bird and Xinboda. Therefore, we sought to identify the best available SV for the raw garlic bulb input for production rather than re-construct the cost of raw garlic bulb inputs via the calculation of farming costs involved in growing the input. The Department’s practice when selecting the “best available information” for valuing FOPs, in accordance with section 773(c)(1) of the Act,⁶² is to select, to the extent practicable, SVs which are publicly available, product-specific, representative of a broad market average, tax-exclusive, and contemporaneous with the POR.⁶³ For the preliminary results of this review, we find that data from the garlic prices from the “Fruit Inform” website provides the most appropriate information

⁵⁸ See, e.g., 09-10 Garlic Final and accompanying Issues and Decision Memorandum at Comment 4; see also Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 from the People’s Republic of China, 69 FR 67304 (November 17, 2004) and accompanying Issues and Decision Memorandum at Comment 3; Allied Pacific Food (Dalian) Co. Ltd. v. U.S., 716 F. Supp. 2d 1339, 1343 (CIT 2010).

⁵⁹ See Sigma Corp. v. United States, 117 F.3d 1401, 1408 (Fed. Cir. 1997).

⁶⁰ See Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) (OTCA 1988) at 590.

⁶¹ The Department considers the following countries to be NMEs: Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, North Korea, the PRC, Tajikistan, Turkmenistan, Uzbekistan and Vietnam.

⁶² Section 773(c)(1)(B) of the Act states that . . . “the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority.”

⁶³ See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People’s Republic of China, 71 FR 16116 (March 30, 2006), and accompanying Issues and Decision Memorandum at Comment 2.

available to value raw garlic bulb inputs. The Department has used garlic prices from “Fruit Inform” to value the respondents’ by-product offset. For more information regarding the Department’s valuation for the raw garlic bulb inputs, see Surrogate Values Memorandum.

Labor

Section 773(c) of the Act, provides that the Department will value the FOPs in NME cases using the best available information regarding the value of such factors in an ME country or countries considered to be appropriate by the administering authority. The Act requires that when valuing FOPs, the Department utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are (a) at a comparable level of economic development and (b) significant producers of comparable merchandise.⁶⁴

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME AD proceedings.⁶⁵ In Labor Methodologies, the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary SC. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization's (ILO) Yearbook of Labor Statistics.

As noted above, the Department has selected Ukraine as the SC for the preliminary results. As a result, the Department has obtained and relied on the ILO Chapter 6A data from Ukraine to value the labor usage rates reported by Golden Bird and Xinboda.

Financial Ratios

The Department's criteria for choosing surrogate companies are the availability of contemporaneous financial statements, comparability to the respondent's experience, and publicly available information.⁶⁶ Moreover, for valuing factory overhead (OH), selling, general and administrative expenses (SG&A) and profit, the Department normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the SC.⁶⁷ In addition, the CIT has held that in the selection of surrogate producers, the Department may consider how closely the surrogate producers approximate the non-market producer's experience.⁶⁸

⁶⁴ See section 773(c) of the Act.

⁶⁵ See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, 76 FR 36092 (June 21, 2011) (Labor Methodologies). This notice followed the Federal Circuit decision in Dorbest Ltd. v. United States, 604 F.3d 1363, 1372 (Fed. Cir. 2010), which found that the regression-based method for calculating wage rates as stipulated by section 351.408(c)(3) of the Department's regulations uses data not permitted by the statutory requirements laid out in section 773 of the Act (*i.e.*, 19 U.S.C. 1677b(c)).

⁶⁶ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People's Republic of China, 70 FR 24502 (May 10, 2005) and accompanying Issues and Decision Memorandum at Comment 3.

⁶⁷ See, e.g., Diamond Sawblades and Parts Thereof from the People's Republic of China, Final Determination in the Antidumping Duty Investigation, 71 FR 29303 (May 22, 2006) and accompanying Issues and Decision Memorandum at Comment 2; see also 19 CFR 351.408(c)(4); section 773(c)(4) of the Act.

⁶⁸ See Rhodia, Inc. v. United States, 240 F. Supp. 2d 1247, 1253-1254 (CIT 2002); see also Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 6836 (February 9, 2005) and accompanying Issues and Decision Memorandum at Comment 1.

