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DATE: November 4, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Results of
Antidumping Duty New Shipper Review of Fresh Garlic from the
People's Republic of China: Shijiazhuang Goodman Trading Co.
Ltd.

SUMMARY

In response to a request from an interested party, the Department of Commerce ("Department") is conducting a new shipper review ("NSR") on Shijiazhuang Goodman Trading Co. Ltd. ("Goodman") of the antidumping duty order on fresh garlic from the People's Republic of China ("PRC"). The period of review ("POR") is November 1, 2011, through October 31, 2012. Upon examining Goodman's sales and entries into the United States during the POR, the Department has preliminarily determined that Goodman is a new shipper, and it has made sales below normal value during the POR.

BACKGROUND

On November 16, 1994, the Department published the order on fresh garlic from the PRC. *See Antidumping Duty Order: Fresh Garlic from the People's Republic of China*, 59 FR 59209 (November 16, 1994). On December 6, 2012, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (Act), and 19 CFR 351.214(c), Goodman requested an NSR. *See Letter from Goodman to the Secretary of Commerce, "Fresh Garlic from the People's Republic of China- Re-filing Request for Antidumping New Shipper Review of Shijiazhuang Goodman Trading Co., Ltd.,"* December 6, 2012 (NSR Request).¹ Based on the information provided by Goodman, pursuant to section 751(a)(2)(B)(i) of the Act and 19 CFR 351.214(b), the Department

¹ Goodman had originally filed its request on November 27, 2012, as stated in the *Federal Register* notice of initiation of this review; however, the Department rejected the request due to an incorrect statement of the period of review.



initiated an antidumping duty NSR for Goodman on January 2, 2013. *See Fresh Garlic From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review; 2011-2012, 78 FR 88 (January 2, 2013).*

On January 2, 2013, the Department initiated this NSR for Goodman to determine whether imports into the United States of fresh garlic from the PRC are being sold below normal value. On August 15, 2013, the Department released U.S. Customs and Border Protection ("CBP") data for the Harmonized Tariff Schedule of the United States ("HTSUS") numbers included in the "Scope of the Order" section below. *See Memorandum to the File, from the Team, "New Shipper Review of Shijiazhuang Goodman Trading Co., Ltd. of Fresh Garlic from the People's Republic of China (A-570-831)." (August 15, 2013).* Upon examining the entry data results, the Department confirmed that Goodman exported sales of the subject merchandise during the relevant period of review. On July 30, 2012, the Department issued the antidumping questionnaire to Goodman. Between May 13, 2013, and September 18, 2013, the Department issued supplemental questionnaires; Goodman timely responded. The Petitioner submitted comments on Goodman's responses on April 15, 2013; June 10, 2013; August 19, 2013; and October 24, 2013.

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013. *See Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government" (October 18, 2013).* Therefore, all deadlines in this segment of the proceeding have been extended by 16 days. If the new deadline falls on a non-business day, in accordance with the Department's practice, the deadline will become the next business day. The revised deadline for the preliminary determination of this review is now November 4, 2013.

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, 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 harvested 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: 0703.20.0000, 0703.20.0010, 0703.20.0015, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, 0711.90.6500, 2005.90.9500, 2005.90.9700, 2005.99.9700, and of the Harmonized Tariff Schedule of the United States (HTSUS).²

² *See Antidumping Duty Order: Fresh Garlic From the People's Republic of China, 59 FR 59209 (November 16, 1994).*

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 the 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 declarations to U.S. Customs and Border Protection to that effect.

DISCUSSION OF THE METHODOLOGY

Harmonized Tariff Schedule (HTS) Number Classification

The Department has observed that Goodman classified its garlic under one HTS number within the scope of this order although Goodman clearly describes its merchandise in a manner that would classify the garlic under another HTS number within the scope of this order. For purposes of analysis in this NSR, the Department has chosen to analyze Goodman's transactions under the HTS number most accurate to its description – HTSUS subheading 0703.20.0010.

Bona Fide Sale Analysis

For this review, consistent with the Department's practice, the Department investigated the *bona fide* nature of the sale made by Goodman during the POR. In evaluating whether a sale in an NSR is commercially reasonable, and therefore *bona fide*, the Department considers, *inter alia*, such factors as: (1) the timing of the sale; (2) the price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the transaction was made on an arm's-length basis.³ Accordingly, the Department considers a number of factors in its *bona fide* sale analysis, "all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise."⁴

The Department preliminarily finds that the sale of subject merchandise made by Goodman was made on a *bona fide* basis. Specifically, the Department preliminarily finds that: (1) the timing of the sale by itself does not indicate that the sale might not be *bona fide*; (2) record evidence indicates that the prices and quantities of the sales are commercially reasonable and not atypical of normal business practices of fresh garlic exporters; (3) Goodman did not incur any extraordinary expenses arising from the transaction; (4) the goods were resold by Goodman's unaffiliated U.S. customer for a profit; and (5) the new shipper sales were made between Goodman and its unaffiliated U.S. customer at arm's length.⁵ Therefore, the Department has preliminarily found that Goodman's sales of subject merchandise to the United States were *bona fide* for the purposes of this NSR.

³ See, e.g., *Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246, 1250 (CIT 2005).

⁴ See *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1342 (CIT 2005) (citing *Fresh Garlic From the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002)).

⁵ See Memorandum from Hilary E. Sadler, Esq., Senior International Trade Compliance Analyst, Office 6 AD/CVD Operations to Dana S. Mermelstein, Program Manager, Office 6, AD/CVD Operations, "Bona Fide Nature of the Sales in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China (PRC): Shijiazhuang Goodman Trading Co., Ltd." dated concurrently with this memorandum.

Non-Market Economy Country Status

In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is a nonmarket economy (“NME”) country shall remain in effect until revoked by the administering authority.⁶ As such, the Department continues to treat the PRC as an NME in this proceeding. Accordingly, we calculated normal value using the factors of production (“FOP”) methodology in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assessed a single antidumping duty rate.⁷ In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME reviews.⁸ It is the Department’s policy to assign all exporters of subject merchandise in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.⁹ Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* governmental control over export activities.¹⁰ The Department analyzes each entity’s export independence under a test first articulated in *Sparklers* and as further developed in *Silicon Carbide*.¹¹ 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.¹²

Separate Rate Recipient

Wholly Chinese-Owned Company

Goodman reported that it is a wholly Chinese-owned company by providing a copy of its business license.¹³ According to Goodman’s business license, it is “a company limited (wholly owned by a legal person) privately owned.” Therefore, the Department must analyze whether this respondent can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

⁶ See section 771(18)(C)(i) of the Act.

⁷ See Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries, available at <http://ia.ita.doc.gov/policy/bull05-1.pdf>.

⁸ See *Initiation Notice*, 77 FR at 45336.

⁹ See *id.*

¹⁰ See *id.*

¹¹ 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*”); see also *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*”).

¹² See, e.g., *Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People’s Republic of China*, 72 FR 52355, 52356 (September 13, 2007).

¹³ See Letter from Goodman to the Secretary of Commerce, “Fresh Garlic from the People’s Republic of China – SAQR in Antidumping New Shipper Review on behalf of Shijiazhuang Goodman Trading Co., Ltd.,” dated March 1, 2013, (“Goodman’s Section A Response”) at Exhibit A-3.

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.¹⁴ The evidence provided by Goodman supports a preliminary finding of an absence of *de jure* government control based on the criteria outlined above.¹⁵

b. Absence of De Facto Control

Typically, the Department considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) whether the EPs are set by or are subject to the approval of a government agency, (2) whether the respondent has authority to negotiate and sign contracts and other agreements, (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management, and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.¹⁶ The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control, which would preclude the Department from assigning separate rates. The evidence provided by Goodman supports a preliminary finding of *de facto* absence of government control based on the criteria outlined above.¹⁷

As a result of our analysis, the Department preliminarily finds that Goodman established that it qualifies for a separate rate under the criteria established by *Silicon Carbide* and *Sparklers*.

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 normal value (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 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

¹⁴ See *Sparklers*, 56 FR at 20589.

¹⁵ See Goodman's Section A Response at questions 2(b) through 2(f) and 5 (financial practices).

¹⁶ See *Silicon Carbide*, 59 FR at 22587; see also *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).

¹⁷ See Goodman's Section A Response at question 2 and supporting exhibits.

Department's practice to select an appropriate surrogate country (SC) based on the availability and reliability of data from the countries.¹⁸

Pursuant to section 773(c)(4) of the Act, the Department determined that Colombia, Costa Rica, Indonesia, the Philippines, South Africa and Thailand are countries comparable to the PRC in terms of economic development.¹⁹ 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.²⁰ In this case, the GNI available are based on data published in 2011, with the GNI levels for the list of potential surrogate countries ranging from \$2,210 to \$7,660.²¹ 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).²² As the Department's policy is to consider all countries on the SC list to be equally comparable economically, we evaluated which of these countries is also a significant producer and has reliable data so to choose an appropriate SC.

B. Significant Producers of Comparable Merchandise

Where possible, the Department relied on the 2011 United Nations Food and Agriculture Organization ("FAO") production data for fresh garlic when considering whether any of the countries in the Surrogate Country List are also significant producers of comparable merchandise. The production data placed on the record of this review²³ for the six countries on the Surrogate Country List indicates that domestic production levels are as follows:

¹⁸ See Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin No. 04.1).

¹⁹ See Letter to All Interested Parties regarding "Fresh Garlic from the People's Republic of China: Surrogate Countries Selection and Surrogate Value Information," dated May 2, 2013 (Surrogate Country List).

²⁰ 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.

²¹ See Surrogate Country List.

²² See *Fujian Lianfu Forestry Co., Ltd. v. United States*, 638 F. Supp. 2d 1325 (CIT 2009).

²³ See, e.g., Petitioners SV Submission at page 5.

Economically-Comparable Countries²⁴	Garlic Production (MTs)
Thailand	75,589
Indonesia	14,749
The Philippines	9,056
Colombia	6,170
South Africa ²⁵	1,500
Costa Rica	0

This production data indicates that Colombia, Indonesia, the Philippines and Thailand are significant producers of comparable merchandise. As these countries are both economically comparable and significant producers of comparable merchandise, we have considered them as potential surrogate countries. Costa Rica had no garlic production. Consequently, the Department does not consider it a significant producer and therefore has not considered any SVs from Costa Rica. Additionally, we note that the FAO production data indicated that there was no production of garlic in South Africa during 2011.²⁶ However, we note that information from the South African DAFF, provided by petitioners, indicates that South Africa did have garlic production during 2011.²⁷ As discussed further below, the Department has concerns regarding the reliability of the garlic data from South Africa. Thus, due to the uncertainty of whether the country actually produces garlic and the concerns with regards to the actual garlic data, we will not consider any SVs from South Africa in these preliminary results.

Additionally, petitioners have argued that, consistent with the previous administrative review of fresh garlic from the PRC,²⁸ the Department should consider using Ukraine 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 four of the six countries on the Surrogate Country List are significant producers of fresh garlic and interested parties have submitted possible SVs for all FOPs. Additionally, petitioners have placed no information regarding garlic production in Ukraine during 2011 on the record, and aside from garlic bulb prices, have provided no other surrogate value information on the record. As such, the Department has not considered any SVs from Ukraine.

²⁴ Unless otherwise indicated, production data was based on FAO data.

²⁵ South African Department of Agriculture, Forestry and Fisheries ("DAFF"). See Petitioners SV Submission at page 16.

²⁶ See e.g., Goodman SV submission at F-1.

²⁷ See Petitioners SV Submission at page 16.

²⁸ See *Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 36168 (June 17, 2013) (*Garlic 2010-2011*) and accompanying Issues and Decision Memorandum.

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.²⁹ In this case, we looked at the availability of information regarding the most significant FOPs. As in prior proceedings of this order, raw garlic bulb 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.³⁰ As such, we must consider the availability and reliability of the SVs for raw garlic bulb on the record. 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.

The Department received submissions regarding the characteristics of garlic produced in the Philippines, South Africa and Thailand. There is no other information to evaluate the characteristics of garlic produced by the other countries on the Surrogate Country List. Therefore, we have narrowed the selection of a primary SC for this review to the Philippines and Thailand.

A review of the information regarding garlic grown in the Philippines and Thailand indicates that the garlic produced in these countries is smaller than the large garlic bulbs produced in the PRC. Specifically, the garlic grown in Thailand appears to be 3.5 mm or less.³¹ While there is information indicating that larger garlic may be grown in the Philippines,³² there is no information to indicate how much, if any, of this large garlic is actually grown in the country. Additionally, petitioners have indicated that the average size of garlic grown in the Philippines is in the 30 to 45 mm range.³³ Petitioners have indicated that "although China produces large garlic with garlic bulb diameters at or above 55 mm, garlic reported by the respondents has been of more moderate bulb diameters."³⁴ Thus, the Department finds no clear evidence that one country's garlic is more comparable to Chinese garlic than the other. Therefore, for purposes of these preliminary results, we have evaluated which country's pricing data is the most reliable. The pricing data for the Thai garlic, provided by Goodman, was reportedly issued by the Thai Ministry of Agriculture Cooperatives ("MOAC").³⁵ However, no supporting MOAC publication or website printout was provided. Instead, a printout from a website (www.rakbankerd.com), which appears to be business portal, was provided. The Philippine pricing data is published by the Philippine Department of Agriculture's Bureau of Agricultural Statistics ("BAS"),³⁶ which

²⁹ See Policy Bulletin No. 04.1.

³⁰ See e.g., *Garlic 2010-2011*

³¹ See Goodman SV Submission at Exhibit 3 ("Table I Size of the Garlic Bulb").

³² See Petitioners' SV Submission at Exhibit P-2 ("7. Size classification")

³³ *Id.* at pages 11 and 12.

³⁴ *Id.* at 12.

³⁵ See Goodman SV Submission Exhibit 6.

³⁶ See Petitioners' SV Submission at Exhibits P-4 and P-5.

matches the prices published in the FAO data.³⁷ Since the Department is able to tie the Philippine garlic prices directly to official government sources as well as to the FAO data, we find that this provides a more reliable source for data than the Thai garlic pricing. Additionally, while both the Philippine and Thai price data are publicly available and contemporaneous, the Philippine prices clearly exclude taxes and duties,³⁸ whereas we cannot determine whether the Thai prices exclude taxes and duties. On this basis, we have preliminarily selected the Philippines 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 the Philippines is not available, the Department will use SVs from Thailand. The sources of the SVs are discussed under the "Normal Value" section below and in the Surrogate Values Memorandum.³⁹

Date of Sale

Consistent with our regulation, Goodman reported the invoice date as the date of sale.⁴⁰ The Department found the invoice dates to be prior to shipment dates in the CBP data. Therefore, because Goodman's sale was shipped after the invoice date, and consistent with the Department's practice, we selected the invoice date as the date of sale.

Fair Value Comparisons

To determine whether Goodman sold fresh garlic to the United States at less than normal value, the Department compared the export price ("EP") to the normal value, as described in the "Export Price" and "Normal Value" sections below.⁴¹

Differential Pricing Analysis

The Department's differential pricing analysis requires a finding of a pattern of EPs (or constructed EPs) for comparable merchandise that differs significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin.

³⁷ See Petitioners' SV Submission at pages 13 and 14.

³⁸ See Petitioners' SV Submission at Exhibit P-9.

³⁹ 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 November 4, 2013 ("Surrogate Values Memorandum").

⁴⁰ See Goodman's Section A Response at A-21; Letter from Goodman to the Secretary of Commerce, "Fresh Garlic from the People's Republic of China – SCQR in Antidumping New Shipper Review on behalf of Shijiazhuang Goodman Trading Co., Ltd.," dated March 12, 2013, ("Goodman's Section C Response").

⁴¹ 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 with monthly weighted-average NVs and granted offsets for non-dumped comparisons in the calculation of the weighted average dumping margin.

The differential pricing analysis evaluates all purchasers, regions, and time periods to determine whether a pattern of price differences exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the customer codes reported by Goodman. Regions are defined using the reported destination code (*i.e.*, zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the period of review being examined based upon the reported date of sale. For purposes of analyzing sales transactions by customer, region and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP (or constructed EP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis, the “Cohen’s *d* test” is applied. The Cohen’s *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen’s *d* test is applied when the test and comparison groups of data each have at least two observations and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. In the instant review, we do not have enough sales data to establish usable comparison and test groups. When this is the case, no comparison is made.⁴²

U.S. Price

In accordance with section 772(a) of the Act, EP is the price at which the 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. In accordance with section 772(a) of the Act, we used EP for the U.S. sales of Goodman because the subject merchandise was sold directly to the unaffiliated customers in the United States prior to importation and because constructed EP was not otherwise warranted.

We based the EP on delivered prices to an unaffiliated purchaser in the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting prices for movement expenses, including expenses for foreign inland freight from the plant to the port of exportation and domestic brokerage and handling.⁴³ Goodman did not report or claim any other adjustments to EP.⁴⁴

⁴² See “Administrative Review of Fresh Garlic from the People’s Republic of China: Calculation Memorandum for the Preliminary Results of Shijiazhuang Goodman Trading Co. Ltd.,” dated concurrently with this memorandum.

⁴³ See Goodman’s Section C Response at C-19 and C-20 and Exhibit C-1.

⁴⁴ *Id.*

Normal Value

A. Methodology

Section 773(c)(1)(B) of the Act provides that the Department shall determine normal value (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 by choosing to apply an SV to an intermediate input instead of the individual FOPs used to produce that intermediate input.

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. In the 11th administrative review 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.”⁴⁵ In the course of this review, the respondent did not report FOPs related to growing whole garlic bulbs. As such, for the reasons outlined in the Intermediate Input Methodology Memorandum⁴⁶, the Department is applying an “intermediate-product valuation methodology” to the respondent in these preliminary results. Using this methodology, the Department calculated NV by starting with the SV for the garlic bulb (*i.e.*, the “intermediate product”), adjusting for yield losses during the processing stages, and adding the respondent's processing costs which were calculated using its reported usage rate for processing fresh garlic.

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 a market-economy (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, Goodman did not report that any inputs were sourced from ME suppliers.

⁴⁵ See *Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the Eleventh Administrative Review and New Shipper Reviews*, 77 FR 34438 (June 22, 2007), and attached memorandum from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration to David M. Spooner, Assistant Secretary of Import Administration, “Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Issues and Decision Memorandum for the Eleventh Administrative Review and New Shipper Reviews” at <http://enforcement.trade.gov/frn/summary/prc/E7-12031-1.pdf> (June 11, 2007).

⁴⁶ See “New Shipper Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Intermediate Input Methodology,” (“Intermediate Input Methodology Memorandum”), dated consistent with this memorandum.

As the basis for NV, Goodman 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 Goodman using publicly-available SVs from the Philippines and Thailand. 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) contemporaneity of the data. 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.⁴⁷ 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.⁴⁸ 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. For more information regarding the Department's valuation for the various FOPs, see Surrogate Values Memorandum.

1. 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 is produced directly from the raw garlic bulb. As discussed above, the Department is applying an intermediate input methodology for Goodman. 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, 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. For the preliminary results of this review, we find that "Farmgate Prices" from "CountrySTAT Philippines," a website of the Bureau of Statistics of the Department of Agriculture, provides the

⁴⁷ See *Sigma Corp. v. United States*, 117 F.3d 1401, 1408 (Fed. Cir. 1997).

⁴⁸ 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.

most appropriate information available to value raw garlic bulb inputs. For more information regarding the Department's valuation for the raw garlic bulb inputs, see Surrogate Values Memorandum.

2. Labor

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME AD proceedings. 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.⁴⁹ 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 the Philippines as the primary SC for the preliminary results. As a result, the Department has obtained and relied on the ILO Chapter 6A data from the Philippines to value the labor usage rates reported by Goodman.

3. 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.⁵⁰ 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.⁵¹ 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.⁵²

The Department received seven financial statements, five from Philippine companies and two from Thai companies. As a result of the Department's analysis of these statements, the Department has preliminarily determined that the financial statements from the Thai company AgriPure Holdings Public Company ("AgriPure") are the best available information. The Department notes that in the selection of SVs, we have the obligation to select from the information placed on the record. Accordingly, the Department has preliminarily calculated OH,

⁴⁹ 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)).

⁵⁰ 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.

⁵¹ 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.

⁵² 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.

SG&A and profit based on AgriPure's financial statements but also invites interested parties to submit additional financial statements for consideration for the final results. Additionally, the Department will search for more appropriate financial statements and, should any be obtained, will place them on the record and provide parties an opportunity to comment on them. For more information regarding the Department's evaluation of the financial statements and the calculation of surrogate financial ratios, *see* Surrogate Values Memorandum.

4. Other Surrogate Values

The Department has obtained SVs for all other inputs and costs, as reported by Goodman. For more information regarding the Department's selection and application of SVs for all other reported inputs and costs, *see* Surrogate Values Memorandum.

Currency Conversion

Where necessary, the Department made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank. These exchange rates are available on the Enforcement and Compliance website at <http://enforcement.trade.gov/exchange/index.html>.

For a complete listing of all the inputs and a detailed discussion about our SV selections, *see* Goodman's Preliminary Results Surrogate Value Memorandum.

RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

✓

Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

9 NOVEMBER 2017
(Date)