

June 4, 2012

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Import Administration

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

SUBJECT: Issues and Decision Memorandum for Fresh Garlic from the  
People's Republic of China: Final Results of the 2009-2010  
Administrative Review

## SUMMARY

The Department of Commerce (the Department) has analyzed the case briefs submitted by Petitioners,<sup>1</sup> Jinan Farmlady Trading Co., Ltd. (Farmlady), and Shenzhen Xinboda Industrial Co., Ltd. (Xinboda), as well as the rebuttal briefs submitted by Petitioners, Xinboda, and Hebei Golden Bird Trading Co., Ltd. (Golden Bird) in the administrative review of fresh garlic from the People's Republic of China (PRC).<sup>2</sup> Based on our analysis of the record and comments received, we have made adjustments to our calculations. These are discussed in the Department's positions below, the "Changes Since the Preliminary Results" section of the accompanying Federal Register notice, as well as the accompanying surrogate value and calculation memoranda. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

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<sup>1</sup> Petitioners are the Fresh Garlic Producers Association, its individual members being Christopher Ranch L.L.C., The Garlic Company, Valley Garlic, and Vessey and Company, Inc.

<sup>2</sup> See Fresh Garlic from the People's Republic of China – Case Brief – Petitioners (April 23, 2012) (Petitioners Case Brief); Fresh Garlic from the People's Republic of China – Case Brief - Jinan Farmlady Trading Co., Ltd. (April 20, 2011) (Farmlady Case Brief); Fresh Garlic from the People's Republic of China – Redacted Case Brief – Shenzhen Xinboda Industrial Co., Ltd. (May 1, 2012) (Xinboda Case Brief); Fresh Garlic from the People's Republic of China: Petitioners' Rebuttal Brief (May 2, 2011) (Petitioners Rebuttal Brief); Fresh Garlic from the People's Republic of China Shenzhen Xinboda Industrial Co., Ltd.'s Redacted Rebuttal Brief (May 11, 2012) (Xinboda Rebuttal Brief); and Fresh Garlic from the People's Republic of China Golden Bird Trading Co. Ltd.'s Rebuttal Brief (May 1, 2012) (Golden Bird Rebuttal Brief).

## BACKGROUND

On December 7, 2011, the Department published the Preliminary Results for this review in the Federal Register.<sup>3</sup> The Department also published partial preliminary results and partial final results of this review on October 20, 2011, and February 27, 2011, respectively.<sup>4</sup>

## DISCUSSION OF THE ISSUES:

### Comment 1: Surrogate Country for the Final Results

#### Xinboda's Arguments

- India is disqualified because the most contemporaneous gross national income (GNI) data on the record indicates that India is not economically comparable to the PRC.
- The Department has carried out other antidumping duty administrative reviews that cover similar periods of review which have ruled out the use of India as the surrogate country (SC) based on the contemporaneous GNI data.
- The contemporaneous GNI data placed on the record by Xinboda three months before the final surrogate value (SV) submissions were due and two months before the publication of the Preliminary Results provided significant time for analysis by the Department.
- The U.S. Court of International Trade (CIT), in Longkou, stated “if Commerce selects a particular set of data that is demonstrably unrepresentative or distortional, a reasonable mind may rightly question how such a selection could be considered the ‘Best.’”<sup>5</sup>
- Thailand is economically comparable to the PRC and a superior source of available data for the final results when compared to India.
- Even if the Department decides to use the GNI data in the Surrogate Country Memorandum,<sup>6</sup> the Department must reject India because of the nature of its garlic market. India is not a market economy for garlic because of “serious” interference in the garlic market on the part of the Government of India (GOI), rendering garlic prices in India between 2008 and 2010 “irreversibly distorted” and therefore unusable.
- Thailand is the only other primary source of data on the record and provides better quality data that is more representative than the Indian data.

#### Petitioners' Rebuttal Arguments

- The Department's identification of potential SCs was consistent with standard practice.
- Xinboda's request that the Department revise its list of potential SCs was untimely.
- The World Bank data submitted by Xinboda was not available when the Department issued this review's Surrogate Country Memorandum.

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<sup>3</sup> See 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) (Preliminary Results).

<sup>4</sup> See Fresh Garlic From the People's Republic of China: Partial Preliminary Results, Rescission of, and Intent To Rescind, in Part, the 2009-2010 Administrative Review, 76 FR 65172 (October 20, 2011); see also Fresh Garlic From the People's Republic of China: Partial Final Results and Partial Final Rescission of the 2009-2010 Administrative Review, 77 FR 11486 (February 27, 2012) (Garlic 16 Partial Final).

<sup>5</sup> See Longkou Haimeng Machinery Co., Ltd. v. United States, 617 F. Supp. 2d 1363, 1369 (CIT 2009) (Longkou).

<sup>6</sup> See Letter to All Interested Parties regarding “16<sup>th</sup> Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China,” dated March 31, 2011 (Surrogate Country Memorandum).

- Xinboda has identified no basis for the Department to change its Preliminary Results.

#### Golden Bird's Rebuttal Arguments

- Golden Bird concurs with Xinboda's argument to use Thailand as the SC, either entirely or partially, based on certain fundamental flaws with the financial ratio options in the selected SC. The Department's regulations do not prohibit it from selecting more than one SC and, in fact, allow it when data quality issues exist in the primary SC.

#### Department's Position

We have continued to use India as the SC for these final results. Notwithstanding Xinboda's arguments, the record shows that India is economically comparable, a significant producer of comparable merchandise, and provides the best quality data.

When selecting an SC, section 773(c)(4)(B) of the Tariff Act of 1930, as amended (the Act) requires that the country be both economically comparable and a significant producer of comparable merchandise. Initially, a list of economically-comparable countries is requested from Import Administration's Office of Policy. This list was provided on March 21, 2011, and it was subsequently released to all parties to this proceeding on March 31, 2011.<sup>7</sup> The list was compiled based on World Bank GNI data and named six countries deemed to be economically comparable to the PRC: India, Indonesia, Peru, the Philippines, Thailand, and Ukraine.<sup>8</sup>

Along with being economically comparable, section 773(c)(4)(B) of the Act requires that an SC also be a significant producer of comparable merchandise. The record indicates that India, Indonesia, Peru, the Philippines, Thailand,<sup>9</sup> and Ukraine are also significant producers of comparable merchandise. Of these, only India provides grade/size specific price data for the raw garlic inputs, which is the primary factor of production (FOP) for the subject merchandise at issue. We note that information on the record of this and all recent garlic reviews indicates that the size/grade of raw garlic inputs is a key determinant in that garlic's price.<sup>10</sup> This size/grade detail contrasts with price data for raw garlic inputs from the other five potential SCs which is neither size nor grade-specific. On this basis, India is the country with the most appropriate data, and remains the SC for these final results.

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<sup>7</sup> See Surrogate Country Memorandum.

<sup>8</sup> See Surrogate Country Memorandum at Attachment 1.

<sup>9</sup> We note that Xinboda has argued that the Department should use Thai garlic import data instead of the Azadpur Agricultural Produce Marketing Committee Ch. Hira Singh Wholesale Fruit & Vegetable Market (Azadpur) prices. As an initial matter, there is no Thai import data on the record. Xinboda attempted to file this information in its case brief but it was rejected by the Department as untimely filed new information.<sup>9</sup> Xinboda has subsequently argued that the Department should have anticipated the intention to place the Thai garlic import data on the record and had an affirmative obligation to either request this information from the respondent or place this information on the record. Neither claim is correct. The court has made it clear in Trust Chem Co. v. United States, 819 F. Supp. 2d 1373 (CIT 2012), that it is the respondents' responsibility to build the case record.

<sup>10</sup> During the course of past reviews, it has become clear that size and grade are important characteristics of the subject merchandise exported from the PRC to the United States. See Comment 5, below. As such, the Department's preference has been to use, whenever possible, prices for the garlic bulb input based on size. In the past three reviews, the Department has used size-specific Indian prices from the Azadpur market in India as the best available information to value the garlic bulb input.

In considering the argument that the Department should have revised or updated its list of potential SCs, we note that the Department considers the selection of potential SCs to be similar to the selection of mandatory respondents in an administrative review – both are very important to the proceeding and must be resolved early in the case in order to provide sufficient time for party participation and the necessary analysis. To ensure sufficient time was provided in selection of potential SCs for this proceeding, shortly after selecting the mandatory respondents the Department, on March 31, 2011, identified a list of six economically-comparable countries based on the most up-to-date information available from the World Bank, which was the World Bank GNI data (2008). Contrary to Xinboda’s claim, World Bank GNI data (2009) was not available on the record of this review for the Department to use at the time of making its SC selection – World Bank GNI data (2009) was released on April 11, 2011, after the Department made its SC determination. Thus, the SC list which the Department released on March 31, 2011 contained the most up-to-date information accessible from the World Bank regarding countries economically comparable to the PRC.

Additionally, parties did not timely challenge the list of potential SCs. As noted in the Preliminary Results, all interested parties were provided four months, from March 31, 2011 through July 29, 2011,<sup>11</sup> to “submit any information which they {felt} the Department should consider when selecting the SC.”<sup>12</sup> Then, based on the comments and information submitted during this four-month period, the Department determined that, of the countries included in the Surrogate Country Memorandum, India would be the SC for the preliminary results.<sup>13</sup>

On April 11, 2011, shortly after the Department had already identified the list of possible SCs for this review, the World Bank released the 2009 GNI data.<sup>14</sup> As Xinboda correctly discusses in its briefs, the Department began using the 2009 GNI data in late May 2011 in other proceedings as the basis for a new list of countries economically comparable to the PRC.<sup>15</sup> However, Xinboda waited until October 5, 2011, to argue that the Department should disregard the list of countries in the March 31, 2011 Surrogate Country Memorandum and instead use the new list of potential SCs which had been issued in reviews of other antidumping duty orders covering similar periods of review. Not only was Xinboda’s October 5, 2011 submission some six months after the World Bank released its new GNI data, it was also five months after the Department issued the first list of potential SCs using the new GNI data and two months after the end of the SC comment period in this review.

Xinboda maintains that the submission, while two months late, was still two months prior to the publication of the Preliminary Results and, therefore, was submitted in more than enough time for the Department to reconsider its list of potential SCs, particularly for the final results. The Department provided the parties to this proceeding with more than sufficient time to submit any information related to the potential SCs for this administrative review. Yet, the Department notes that, at no time during the SC comment period in this review, did any party, including Xinboda, submit any new information or in any way contest the Surrogate Country

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<sup>11</sup> See Preliminary Results, 77 FR at 76377.

<sup>12</sup> See Surrogate Country Memorandum.

<sup>13</sup> See Preliminary Results, 77 FR at 76377.

<sup>14</sup> See <http://blogs.worldbank.org/conflict/category/tags/wdr-2011>.

<sup>15</sup> See Xinboda Case Brief at 6; see also Petitioners Rebuttal Brief at 76.

Memorandum list. In accordance with its regulations and practice, the Department identified potential surrogate countries based on the information available to it at the time. Specifically, the Surrogate Country Memorandum list of potential SCs used the most up-to-date information available at the time to identify the six economically-comparable countries on the list, including India. As discussed above, it is important for the Department to determine the list of potential SCs early in the case in order to provide sufficient time for party participation and the necessary analysis. This list represents the best information available to the Department at the time it was issued. Revising the list of SCs at a later date would be potentially unfair to the parties and create undue administrative difficulties.

Xinboda's citation to Longkou is inapplicable and does not support its argument that the Department must disregard its SC list. In Longkou, the CIT addressed whether the Department met the standards for selection of SVs instead of an SC, thus the CIT's ruling in Longkou is not applicable here. There is no support to Xinboda's argument that the SC list should be disregarded because the data contained within it is, as a result of newer data, unrepresentative and distortive.<sup>16</sup> The Department notes that the deadlines set during the review for selecting a SC are different and earlier from those used to identify SVs. As discussed above, the Department has a preference to provide the SC list in sufficient time to allow parties to make the substantive arguments necessary regarding the values used for comparison.

We disagree that the fact that the Department used the 2009 GNI data for SC selections made after May 24, 2011 in administrative reviews with similar periods of review (PORs) to the instant review is reason to reconsider the SC selection in this review. As discussed, the Department considers that the selection of an SC must be resolved early in the case in order to provide sufficient time for party participation and the necessary analysis. In accordance with its regulations and practice, the Department identified the appropriate SCs based on the information available to it at the time. The timing of other reviews, and timely arguments raised by other parties in other reviews, do not make the Department's SC list here unreasonable, unrepresentative, or distortive. We note that the Department conducts administrative proceedings throughout the year and that some reviews with similar PORs are conducted on different timelines. Thus, inevitably, the Department will rely on different data for administrative proceedings with similar PORs including data used to select SCs. Moreover, the Department was under no obligation to create an updated SC list, especially considering no party timely challenged the SC list during the comment period prior to the Preliminary Results. As such, for the final results of this review, the Department is continuing to rely on the SC list contained in the Surrogate Country Memorandum.

We also find that regardless of which World Bank GNI data is used, 2008 or 2009, Thailand (which is economically comparable in both periods) is not a more appropriate SC and, as such, the Department has not selected it as the SC over India for the final results. In particular, the potential SV data for raw garlic inputs from Thailand is inferior to that of data from India. Xinboda argues that India is not an appropriate SC because the garlic market in India essentially operates like a non-market economy (NME) because the GOI "has seriously interfered in the garlic market in India" which has resulted in a drastic decrease in garlic imports and distorted

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<sup>16</sup> See Longkou, 617 F. Supp. 2d at 1363, 1369.

prices between 2008 and 2010.<sup>17</sup> In support of this argument, Xinboda cites to a series of news articles, publications, trade statistics and tariff rates as well as the Azadpur price data. We note that while some of these news articles allude to a ban on imports,<sup>18</sup> there is no official GOI announcement or decree on the record of this review banning imports of garlic from the PRC or in general. Also, while Golden Bird claims that information placed on the record shows that the GOI stopped issuing import permits for garlic from the PRC in 2006 because of a specific fungus,<sup>19</sup> this information also described procedures for ensuring garlic was inspected at customs prior to entry into the country, implying that the GOI continued to allow garlic imports into India<sup>20</sup> after 2006. A review of the Indian import statistics does not support arguments that a ban on Chinese garlic or garlic in general went into effect in 2006 or 2008. Specifically, garlic imports, while dropping between 2007 and 2008, were still significant and, more to point, Chinese garlic imports actually increased during this period.<sup>21</sup> While garlic imports did appear to stop in 2009, it is unclear as to why this happened. The respondents have not demonstrated that the GOI undertook steps to interfere or distort prices in the Indian garlic market.

While Xinboda appears to argue that the GOI has manipulated Indian tariff rates on garlic to lock out foreign competition, we note that a review of the Indian tariff schedule provided by Xinboda does not indicate when these rates went into effect and provides no support to Xinboda's argument that the GOI changed the rates to stifle foreign competition.<sup>22</sup> Finally, there is insufficient information on the record to support Xinboda's argument that the Azadpur garlic price increases between 2009 and 2010 demonstrate the GOI's manipulation of garlic prices in the country. Missing from this is an analysis of the Azadpur price data beginning from the date of the alleged ban in 2008 (or 2006). More importantly, Xinboda has not demonstrated any correlation between the fluctuations in garlic prices and any alleged GOI action. Considered together, Xinboda's attempts to show that the GOI purposely manipulated the garlic market to the point that any domestic garlic prices are unreliable are not supported by evidence on the record. Therefore, the Department has not disregarded India or the Indian SVs placed on the record of this review.

## **Comment 2: Cold and Controlled Atmosphere Storage Consumption Factors**

### Petitioners' Arguments

- Cold/Controlled Atmosphere (CA) storage is a necessity for maintaining the marketability of fresh garlic beyond the first few months following harvest.
- The provision of cold/CA storage services involves the use of storage infrastructure, electricity and labor.
- Chinese middlemen that purchase newly-harvested garlic from farmers have developed a massive long-term storage capacity for the product.

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<sup>17</sup> See Xinboda Case Brief at 11.

<sup>18</sup> See, e.g., Xinboda January 6, 2012 Surrogate Value Submission at Exhibit 9; see also Golden Bird July 29, 2011 Surrogate Value Submission at Exhibit 5B.

<sup>19</sup> See Golden Bird July 29, 2011 Surrogate Value Submission at Exhibit 5A.

<sup>20</sup> Id.

<sup>21</sup> See Xinboda January 6, 2012 Surrogate Value Submission at Exhibit 11.

<sup>22</sup> Id. at Exhibit 10.

- Because respondents sourced garlic throughout the period of review (POR), the amount of cold/CA storage required for the garlic sold by the respondents is significant.
- The respondents' own cold/CA storage facilities are inadequate to store the amount of garlic they were purchasing/processing and, therefore, they must have relied on suppliers to store the garlic until the respondents were ready to receive it for quick processing and shipping.
- As a result, the respondents failed to accurately report the FOPs involved in cold/CA storage.
  - Xinboda failed to revise its electricity and labor FOPs to account for Zhengzhou Dadi Garlic Industry Co., Ltd. (Dadi)'s cold storage.
  - Golden Bird revised its processing electricity and packing electricity FOPs for cold storage but failed to do so for direct labor.
- The SV for input garlic used by Department in the Preliminary Results does not include cold/CA storage costs incurred by the respondents.
- The prices of garlic sold at Azadpur do not reflect cold storage-related costs because access to cold storage in India is limited or non-existent.
- The CIT and U.S. Court of Appeals of the Federal Circuit (CAFC) have clearly established it is the responsibility of the respondents to provide the information requested.<sup>23</sup>
- The Department has previously corrected or required the respondent to correct the reporting of FOPs that do not make physical or logical sense.
- The Department should calculate the cold/CA storage costs for the respondents and the respondents' suppliers by applying partial adverse facts available.

#### Xinboda's Rebuttal Arguments

- There is no need to increase Xinboda's labor or electricity FOPs to deal with storage because all FOPs have been properly reported.
- Storage is not a task and therefore no employees are assigned to it; workers assigned to specific tasks would move the garlic in and out of storage, with labor charges recorded based on task.
- Xinboda reported all electricity consumed in the production areas, including electricity consumed in the cold storage areas.

#### Golden Bird's Rebuttal Arguments

- Petitioners have not proven that the garlic traded at Azadpur was never kept in cold storage.
- Cangshan Hongyang Vegetable and Foods Co., Ltd. (Cangshan), Golden Bird's production facility, stored very limited amounts of raw garlic in its cold storage facilities.
- No matter how long the raw garlic was kept in cold storage, the costs were included in the purchase price paid by Cangshan.
- The Department's use of the intermediate input methodology means that all up-stream FOPs have been reflected in the value(s) of this intermediate input and any addition of cold storage costs would result in double counting.

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<sup>23</sup> See Nippon Steel Corp. v. United States, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (Nippon Steel); see also China Steel Corp. v. United States, 306 F. Supp. 2d 1291, 1306 (CIT 2004) (China Steel Corp).

### Department's Position

We have not revised our calculations to account for cold or CA storage. Information on the record shows that garlic in the PRC is harvested between May and early June.<sup>24</sup> This raw garlic is semi-perishable and could be dry stored for a period of up to three months. Thus, all of the semi-perishable raw garlic inputs processed by the respondents after mid-September would require either cold or CA storage facilities in order to remain viable for processing during the next six to nine months. Neither respondent has reported the cold/CA storage capacity to store more than a fraction of the raw garlic inputs it consumes on an annual basis and there is no basis to conclude that either company has underreported labor and electricity FOPs associated with cold/CA storage. We note that there is no information on the record which indicates that the respondents pay separate or additional cold/CA storage costs directly to third party storage providers. Moreover, each of the mandatory respondents contends that any such storage costs were included in their purchase price for the raw garlic inputs. As such, there is no basis for adjusting either respondent's FOPs to account for underreported internal or external cold/CA storage expenses.

Notwithstanding Petitioners' claims that access to cold/CA storage in India is limited, there is no evidence on the record showing that the semi-perishable raw garlic sold year-round at the Azadpur market was not cold or CA stored and that Azadpur prices do not already reflect these storage-related costs. Although, as Petitioners claim, the Azadpur daily market bulletin contains a footnote designating whether vegetables sold at the market have been cold stored, the fact that there is no similar designation with any of the garlic prices does not demonstrate that the garlic has never been not cold stored. In fact, it could just mean that it is understood in the market that all garlic must obviously be cold stored considering its short, perishable shelf life and its year-round availability.

Petitioners have also argued Azadpur prices do not reflect cold/CA storage because garlic in India is harvested year-round. They point to the Azadpur data which shows garlic originating from different states phases in and out of the market throughout the year. While this fact may support Petitioners' claim that garlic in India is harvested year round it does not demonstrate that garlic sold at the Azadpur market has never been cold stored. In fact, our analysis of the Azadpur price data on the record indicates that garlic from three states was sold most days of the year. In particular, garlic from Uttar Pradesh (UP) was sold virtually every day during the reporting period. There is no information on the record that indicates that garlic in UP is harvested year-round or that such garlic has a longer shelf life than other garlic (e.g., Chinese). Absent such information, the Department has no basis to conclude that none of the garlic sold during the year had been cold/CA stored.

Accordingly, we have not revised the FOPs to reflect additional cold/CA storage costs because any addition of cold/CA storage factors could potentially result in double counting of storage costs.

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<sup>24</sup> See Petitioners' October 5, 2011 Submission at 22.

### **Comment 3: Whether the Department Must Account for Yield Loss and Shrinkage**

#### Petitioners' Arguments

- Garlic maintained in storage experiences significant shrinkage due to moisture loss.
- Both respondents have significantly underreported their yield losses in the processing.
- The CIT and CAFC have clearly established it is the responsibility of the respondents to provide the information requested.<sup>25</sup>
- The Department has previously corrected or required the respondent to correct the reporting of FOPs that do not make physical or logical sense.
- The Department should calculate the yield and shrinkage losses by applying partial adverse facts available.
- If the Department believes the application of partial adverse facts available requires additional corroboration, the Department should conduct a focused U.S. verification.

#### Xinboda's Rebuttal Arguments

- There is no basis for the Department to make any adjustments to the reported yield loss in the FOP database or to add an FOP category for shrinkage.
- Xinboda properly and fully reported yield losses, which include considerations for shrinkage.
- Xinboda's reported yield loss is squarely within the range of loss Petitioners cite as standard in the U.S. industry, thus suggesting that the reported ratios are normal.
- The discrepancy in the yield loss factor between Xinboda's narrative and the FOP database is because the narrative is an un-calculated estimate not intended to replace the figures calculated for the FOP database.

#### Golden Bird's Rebuttal Arguments

- Comparison of U.S. domestic industry's processing yield losses to Cangshan is irrelevant as the processes are different.
- Because Cangshan processes garlic immediately upon purchase, shrinkage losses are not applicable.

#### Department's Position

The Department determines that is appropriate to use the respondents' data as the basis for their raw garlic consumption factors for peeled garlic for these final results. While Petitioners have argued that processing peeled garlic must generate significantly higher yield losses than those reported by the respondents,<sup>26</sup> we note that there is no indication on the record that either company underreported its consumption or production information for peeled garlic. As an initial matter, Petitioners have not demonstrated how consistent consumption factors are, in and of themselves, an indication that respondents have underreported their consumption. Moreover, our analysis indicates that the apparent yield loss discrepancies noted by Petitioners are largely explained after considering the volume of low-quality, non-export grade garlic that results from processing export-grade peeled garlic. Each respondent has reported selling limited quantities of low-quality, non-export grade peeled garlic products to the domestic market. Information on the

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<sup>25</sup> See Nippon Steel; see also China Steel Corp.

<sup>26</sup> See Petitioners Case Brief at 16-17.

record of this review indicates that the production of these low quality garlic products is incidental to the production process of export-grade subject merchandise. As such, the record evidence indicates that processing the raw garlic inputs for eventual export results in not just some yield loss but also in some remaining low-quality, non-export grade garlic which is sold domestically. This reasonably explains the percentages of yield loss experienced by these respondents, which are within a few percentage points of the standard yield loss proffered by Petitioners. Moreover, each respondent treats this domestically sold garlic as a product which is distinguishable from export grade subject merchandise. Therefore, the peeled garlic products sold on the domestic market are more properly classified as by-products of the production of export-grade subject merchandise. On this basis, the Department has used the respondents' consumption and production data to derive yield factors based on each company's total consumption of raw garlic inputs used to produce export-grade subject merchandise. The Department has valued the by-product offset using contemporaneous Azadpur grade C data.

As Petitioners note in their brief, Golden Bird did report that it calculated losses resulting from cutting of the raw garlic input's stem and removing the skin which are very light in weight. Petitioners attempt to break out the levels of skin surrounding the garlic bulb to show that the reported loss is incorrect. But the record evidence contradicts Petitioners' claim that Golden Bird did not report the loss of "the outer skin of the bulb that is cracked" or the "bulb's interstitial tissue (the pockets in which the clove rest)." Petitioners are correct that Golden Bird did not expressly indicate that in processing the garlic it also has yield loss based on removal of the bulb's root plate. However, the fact that Golden Bird did not distinguish between the stem and root plate loss does not mean they did not report both steps. Likewise, Petitioners have not demonstrated that the plate has significant weight which was not accounted for in the yield loss.

The record evidence highlights that Xinboda's reported yield loss is squarely within the range of loss Petitioners cite as standard in the U.S. industry, thus suggesting that the reported ratios are normal. Although Petitioners highlight<sup>27</sup> a discrepancy of a few percentage points between the ratios reported by Xinboda in its FOP database, which reflects a lower yield, and Xinboda's narrative of its supplemental response, we do not find this a sufficient basis to conclude that Xinboda incorrectly reported its yield loss. Xinboda explained in its rebuttal brief<sup>28</sup> that the yield loss ratio it reported in the narrative to the supplemental response is a rough estimate reported by its production staff based on production experience; it is not a calculated figure, nor was it intended to replace calculated figures based on verifiable company production records. We find this explanation to be reasonable.

Finally, we have made no adjustment for shrinkage due to moisture loss. Petitioners have placed information on the record which indicates that fresh garlic inputs experience shrinkage (*i.e.*, moisture loss) rates of 1.5 percent per month. That said, each of our respondents purchase large amounts of raw garlic inputs on a consistent basis throughout the year which means that any shrinkage that may be occurring is occurring in storage facilities other than the respondents' own facilities and that the stored raw garlic inputs purchased by the respondents already reflect the shrinkage. The respondents contend they process their raw garlic input purchases shortly after taking delivery so that the volume of raw garlic inputs kept in inventory is relatively small.

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<sup>27</sup> *Id.* at 20.

<sup>28</sup> See Xinboda Rebuttal Brief at 2.

There is no information on the record which indicates that either respondent's raw garlic inputs experience measurable shrinkage while kept in inventory at the processing facility.

#### **Comment 4: Whether to Use Garlico Instead of Azadpur for the Raw Garlic Input Price**

##### Xinboda's Arguments

- If the Department continues to rely on India as the SC in this proceeding, it should use the purchase price for raw garlic paid by Garlico Industries Limited (Garlico).
- Most of Xinboda's raw garlic inputs are purchased at commodity agricultural farmgate prices, not specialty product prices from urban markets.
- Garlico's farmgate prices, as listed in its financial statements, are the best available SV for Xinboda's raw garlic inputs because:<sup>29</sup>
  - Both companies buy their garlic at farmgate prices from farms located near their processing plants
  - Both companies have similar purchasing power and position
  - Both companies process and trade similar goods
  - Garlico re-trades a substantial portion of its garlic so it must be high grade garlic
  - The Department has often used input purchase prices from financial statements when this is the best information to value a Chinese respondent's input.
- Petitioners' argument that Garlico purchase prices reflect low-quality garlic has no merit.
- Petitioners' allegations that Xinboda's raw garlic inputs are sourced from far distances have no basis in fact.
- Petitioners' information regarding the use of cold storage in the PRC bears no relation to Xinboda's business operations.

##### Petitioners' Rebuttal Arguments

- Garlico's financial statements are inappropriate for valuing raw garlic inputs consumed by the respondents because Garlico is a garlic dehydrator, not a producer of fresh garlic products.
- Garlico's garlic input value should be used as the SV for the culled by-product garlic reported by Xinboda.

##### Department's Position

We have determined not to use a garlic price derived from Garlico's financial statements as the SV for raw garlic inputs in these final results.

In selecting an SV, section 773(c)(1) of the Act directs the Department to use the "best available information" from the appropriate SC. In determining the "best available information," the Department normally considers five factors: (1) broad market average; (2) public availability; (3) product specificity; (4) tax and duty exclusivity; and (5) contemporaneity of the data.<sup>30</sup> Garlico's data is publicly available and contemporaneous. A review of the record does not

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<sup>29</sup> See Xinboda Case Brief at 24-29.

<sup>30</sup> See 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 (Carbazole Violet IDM) at Comment 3; see also Allied Pacific Food (Dalian) Co. Ltd. v. U.S. 716 F. Supp. 2d 1339, 1343 (CIT 2010) (Allied Pacific).

indicate whether Garlico's garlic purchases are tax and duty exclusive so we cannot draw a conclusion regarding this part of the selection criteria. However, as explained below, we do not find the Garlico financial statements reflect a broad market average or provide sufficient product specificity in comparison to other information on the record.

With respect to product specificity, we have evaluated the respondents' claims regarding Garlico's financial statements and find that the financial statements do not provide the same degree of product-specific information as that included in the Azadpur market data.<sup>31</sup> Garlico's financial statements give no indication of what grade or size of raw garlic inputs the company purchases for its processing and trading operations. Garlico's financial statements contain no evidence or information that allows the Department to conclude, as Xinboda contends, that Garlico's garlic purchases are (1) farmgate prices, (2) sourced locally, (3) high-grade garlic, or (4) otherwise similar to the garlic consumed by the Chinese respondents in this case. This differs from other Indian garlic price data on the record which is grade/size specific.

Garlico's primary operation is as a producer of vegetable (including garlic) powders and flakes which require dehydration. Farmers who grow garlic intended for purpose of future dehydration into powder/flakes grow and harvest the garlic mainly to achieve maximum yield without concern for the garlic's appearance. Thus, dehydrator garlic farmers will plant garlic with twice the density as fresh garlic growers, and employ cultivation and irrigation methods that allow for fewer skins and drier bulbs.<sup>32</sup> As such, there is no basis to conclude that the raw garlic inputs purchased by Garlico are physically comparable to the large-sized garlic purchased and processed by Xinboda and Golden Bird into fresh whole and peeled garlic.

Additionally, Xinboda's claims that a Garlico-derived raw garlic input SV is superior to other potential Indian SV sources because Garlico purchases its raw garlic inputs at the farmgate is misplaced. There is no information on the record as to how or where Garlico purchases its raw garlic inputs. Moreover, as addressed in more detail in Comment 6, below, we find that neither respondent purchases its garlic inputs at the "farmgate."<sup>33</sup> The fact that their processing facilities may be close to a major garlic growing area in the PRC does not automatically mean that the price the respondents pay for raw garlic inputs are "farmgate" prices. Rather, the record shows that Xinboda purchases large amounts of garlic inputs year-round. The garlic harvest in the PRC is only May through early June. After harvest, raw garlic can either be kept in dry storage for up to three months or placed into cold or CA storage to preserve it for longer periods of time.<sup>34</sup> Accordingly, any Chinese raw garlic inputs purchased after mid-September must have been kept in cold or CA storage facilities to prevent spoilage. The record demonstrates that while Xinboda and Golden Bird both purchase garlic in every month of the year, both companies have acknowledged that their own cold/CA storage facilities are not sufficient to store their annual raw garlic input purchases. Therefore, the vast majority of what Xinboda and Golden Bird purchase during the course of the year must have been stored at third-party cold/CA storage

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<sup>31</sup> See Golden Bird July 29, 2011 SV Submission at Exhibit 13; see also Comment 5, below.

<sup>32</sup> See Fresh Garlic from the People's Republic of China, Inv. No. 731-TA-683 (Final), USITC Pub. No. 2825 (ITC Report) at I-6.

<sup>33</sup> Xinboda uses the term "farmgate" and claims that it buys its garlic direct from farmers at their farms. While Xinboda does purchase garlic bulb inputs from farmers, information on the record demonstrates that the garlic bulbs must have been stored at third-party facilities. For more discussion on this, see Comment 5, below.

<sup>34</sup> See, e.g., Petitioners' October 5, 2011 Submission at 20.

facilities in order for both companies to produce and sell over the course of the year the quantities of fresh garlic they reported.

With respect to the broad market average factor, the Department generally resorts to using company-specific information only when country-wide information is not available. Therefore, while Xinboda correctly argues that the Department has previously relied upon input prices constructed using financial statements, Xinboda concedes that this decision was based on the fact that a financial statement was the only record evidence specific to that FOP and/or was of sufficient specificity and quality.<sup>35</sup> In contrast, here we find that the Garlico financial statements are not the only information on the record that could be used to value raw garlic inputs – the Azadpur data is reliable, size/grade specific and representative of a broad market average.<sup>36</sup> Moreover, a broad market average would reflect price quotes that represent numerous transactions between many buyers and sellers; the experience of a single company, such as Garlico, is less representative of the input costs and is therefore less reliable.<sup>37</sup> The Department has consistently found the Azadpur prices to represent a broad market average.<sup>38</sup>

Finally, Garlico's financial statements suffer from numerous discrepancies that call into question its overall reliability.<sup>39</sup> For this reason, we disagree with Petitioners that it is appropriate to rely on the constructed garlic price from Garlico's financial statements' price for the SV for the non-export grade by-product garlic that is a by-product of the respondents' production processes. In sum, Garlico's financial statements lack specificity and quality and do not provide a broad market average.<sup>40</sup> In contrast, the Azadpur data is reliable, representative of a broad market average, product specific, publicly available and mostly contemporaneous.<sup>41</sup> Accordingly, the Garlico financial statements are not the best available information on the record of this proceeding and the Department will not use them as the basis for determining the raw garlic input SV in the final results.

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<sup>35</sup> See Xinboda Case Brief at 27.

<sup>36</sup> For a more detailed discussion on this, see Comment 5.

<sup>37</sup> See Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From the People's Republic of China, 69 FR 34125 (June 18, 2004) and accompanying Issues and Decision Memorandum at Comment 9.

<sup>38</sup> See, e.g., Fresh 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 37321 (June 27, 2011) and accompanying Issues and Decision Memorandum (Garlic 15 IDM) at Comment 3.

<sup>39</sup> See Comment 8, below.

<sup>40</sup> Contrary to Xinboda's claim, we are not finding that Garlico's financial statements are inappropriate to use for the raw garlic input SV because of its price but because it lacks reliability, representativeness and specificity.

<sup>41</sup> The Azadpur data for grades A and B are contemporaneous. Comment 6 below addresses arguments raised regarding the non-contemporaneity of Azadpur grade SA data.

## Comment 5: Whether Azadpur Prices are the Best Source for Raw Garlic Input Surrogate Values

### Xinboda's Arguments

- The Market Research Report<sup>42</sup> establishes that Azadpur market prices are not farmgate prices and therefore not representative of the Chinese respondents' actual experience:
  - Demonstrates that prices include a variety of costs beyond the farmgate.
  - Premium prices charged for large-size garlic are added later, not paid to farmers.
- The Department has relied upon previous market research studies in past reviews of fresh garlic from the PRC and therefore must also take into consideration the market research study placed on the record by Xinboda.
- The Department's own findings of the Azadpur market indicate its prices are not farmgate prices and therefore must deduct the costs and expenses of bringing garlic to and selling garlic at the Azadpur market.
- The CIT, in Jinan Yipin, ruled that large-size bulbs in India are specialty products not specific to Chinese respondents' FOPs.<sup>43</sup>
- The CIT has ruled that the Department cannot ignore a respondent's own experience and must ensure it is using the best information available.<sup>44</sup>
- Recent information from the Indian government and Indian economic exports confirm that Azadpur has become restrictive and monopolistic and far removed from the Indian farmer's gate.
- India garlic comparable to the PRC's large-bulb garlic is grown and harvested a long distances from the Azadpur market, thus affecting Azadpur prices.

### Petitioners' Arguments

- The respondents did not purchase raw garlic inputs at year-round farmgate prices but rather would have been required to source some raw garlic inputs from intermediary suppliers.
- The distances between the Xinboda facilities and the farms where the raw garlic inputs were sourced are not correct.
- Claims that Azadpur prices must be adjusted down are incorrect because Chinese raw garlic input conditions/characteristics mirror the Azadpur market garlic.
  - Azadpur wholesale prices are the proper SV for the raw garlic inputs because the Azadpur prices properly reflect the wholesale value and marketing stage of raw garlic inputs. For these same reasons, there is no basis to adjust the Azadpur prices for fees/commissions or any other additional costs.
  - However, Azadpur prices do not reflect long-term cold and CA storage costs because garlic in India is cultivated year round and Azadpur data indicate when a commodity has been retrieved from cold storage; none of the Azadpur garlic data shows retrieval

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<sup>42</sup> See Letter from Xinboda to the Department regarding "Fresh Garlic from China – Surrogate Value Submission – Final – APO Researcher Statements Attached," dated January 6, 2012 (Market Research Report) at Attachment "A Profile of Indian Garlic Prices and Market Value Chain 2011."

<sup>43</sup> See Jinan Yipin Corporation, Ltd. v. United States, Slip Op. 11-119 (CIT 2011) (Jinan Yipin).

<sup>44</sup> See Zhengzhou Harmoni Spice Co., Ltd. v. United States, 617 F. Supp. 2d 1281 (CIT 2009) (Zhengzhou Harmoni); see also Nation Ford Chemical v. United States, 166 F.3d 1373 (Fed. Cir. 1999) (Nation Ford); Rhodia, Inc. v. United States, 185 F. Supp. 2d 1343 (CIT 2001).

from cold storage. As such, additional FOPs for cold and CA storage should be added to the respondents' reported FOPs.

- Xinboda's producer's purchases reflect the need for a market premium in grade Super-A (SA) prices.
- Xinboda's claims regarding the inefficiency of Agricultural Produce Market Committees (APMC) are wrong.
- The CIT's Jinan Yipin ruling regarding Azadpur prices does not apply to this review.

#### Xinboda's Rebuttal Arguments

- Dadi purchases its raw garlic inputs directly from local farms, not middlemen.
- Insofar as the farmers themselves rent storage space, use electricity, and pay wages, these costs are included in the price that Xinboda pays for its raw garlic inputs.
- If the Department uses India as the SC, the Department must value the raw garlic inputs at a farmgate price.
- The Department, in using the intermediate input methodology, must use a farmgate price as the SV for Xinboda's raw garlic inputs.
- Arguments that cold storage is not available in India support the argument that the Department should use Thai import statistics as the SV for raw garlic inputs.

#### Golden Bird's Rebuttal Arguments

- Use of the intermediate input methodology requires the Department to use farmgate values for raw garlic input prices.
- The Azadpur prices are not farmgate prices but if the Department continues to use them, it must adjust Azadpur prices accordingly so they are farmgate prices.
- The sizes the Department assigned to grades SA and A garlic are not supported by record evidence.
  - Azadpur traders, rather than the market, grade the garlic<sup>45</sup>
  - The grades of garlic at Azadpur vary based on the availability of garlic at the time of sale, they are not defined solely on the size of the raw garlic.
- No evidence that garlic sold at Azadpur has not been kept in cold storage.

#### Department's Position

We are continuing to use Azadpur data as the basis for the raw garlic input SV for these final results. As discussed below, the Department has analyzed the respondents' arguments that continued use of Azadpur data is not appropriate because the data does not yield "farmgate prices" and the APMC markets, including Azadpur, may be distorted. Notwithstanding these arguments, the Department continues to find the Azadpur data to be the best available information. Moreover, the Department is continuing to adjust its SV calculations for Azadpur-related costs for these final results. Additionally, we have revised our calculations so as to not include additional charges to deliver raw garlic inputs to the respondents' processing facilities. The Department has divided this position into three sections: (1) Evaluation of Best Available Information; (2) Farmgate Prices; (3) Basis for Adjustments to Azadpur Data; and (4) Issues with the Market Research Report and the Researcher Declaration.

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<sup>45</sup> See Jinan Yipin.

## Evaluation of Best Available Information

When selecting the “best available information” for valuing FOPs for use in an NME proceeding, pursuant to section 773(c)(1) of the Act, the Department’s practice, as affirmed by the CIT, is to select SVs which are (1) publically available; (2) product specific; (3) representative of a broad market average; (4) contemporaneous with the POR; and (5) exclusive of taxes and duties.<sup>46</sup> Moreover, the Department’s goal is to find the most representative and least distortive market-based values because the more broad-based the value, the greater the likelihood that the value is representative.<sup>47</sup> The Department has determined that Azadpur prices meet these criteria and are reliable and credible representations of a broad market average of product-specific prices in India that are either contemporaneous or inflated to be contemporaneous for this POR.

The Department undertakes its analysis of valuing the FOPs on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry. There is no hierarchy for applying the above-stated principles. Thus, the Department must weigh all available information with respect to each input value and make a product- and case-specific decision as to what the best available SV information is for each input.

### A. Public Availability

Based on the record of this proceeding, we continue to find the Azadpur daily market bulletins to be publicly available; a finding supported by the CIT in Jining Yongjia. The CIT, in Jining Yongjia, found the bulletin to be publically available because it was posted at the Azadpur facilities for public viewing, it could be obtained in pamphlet form at the market, and it is electronically archived and accessible on request.<sup>48</sup> While we note that only the most recent daily market bulletin is made available on the internet, all market bulletins are readily available to the intended public audience, specifically wholesalers and buyers at Azadpur in India. Moreover, the Department has reviewed the bulletin price data and is satisfied that each day where data could have been available at Azadpur, that data was submitted. Therefore, we do not find that public availability is at issue here with respect to the inaccessibility of a complete set of data.

### B. Product Specificity

In the Preliminary Results, we used prices for grade-specific prices to value respondents’ raw garlic inputs and by-product. The Azadpur daily bulletin is published by the Azadpur market on each trading day and contains, among other things, a list of all fruits and vegetables sold on the previous trading day, the amount (by weight) of each fruit or vegetable sold on that day and a low, high and modal price for each commodity sold. For these final results, we continue to find

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<sup>46</sup> See Carbazole Violet IDM at Comment 3; see also Allied Pacific, 716 F. Supp. 2d at 1339, 1343.

<sup>47</sup> See Garlic From the People’s Republic of China: Final Results and Partial Rescission of the 13th Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 29174 (June 19, 2009) and accompanying Issues and Decision Memorandum (Garlic 13 IDM) at Comment 2.

<sup>48</sup> See Jining Yongjia Trade Co., Ltd., et. al. v. United States, Court No. 08-00386, Slip Op. 2010-134 (CIT 2010) (Jining Yongjia) at 29-30.

that the daily market bulletins contain the best available information for valuing the input in question.

During the course of past reviews, it has become clear that size and quality are important characteristics of the subject merchandise exported from the PRC to the United States because the price of the bulb varies with the size.<sup>49</sup> As such, the Department's preference has been to use, whenever possible, prices for raw garlic inputs based on grade/size.<sup>50</sup> For this reason, since the 2006-2007 administrative review, the Department has used grade/size-specific prices from the Azadpur market in India as the best available information to value raw garlic inputs.<sup>51</sup> Size is the key component in the pricing of garlic and, therefore, it is important to use surrogate Indian garlic values reflecting sales of garlic bulbs of similar diameter to that of the respondents' merchandise during the POR. In the most recently completed administrative review, and in the Preliminary Results of the instant review, we explained that we found the Azadpur data to be the most specific to the input in question because it provides an SV based on bulb size. Having access to grade-differentiated price data from Azadpur allows the Department to construct a detailed and therefore accurate size/grade-specific normal value (NV) calculation for the respondents' raw garlic inputs. The CIT, in Jining Yongjia, supported the use of the grade-specific Azadpur data as it was the only grade-specific information on the record.<sup>52</sup>

Additionally, to establish the relationship between the sizes of raw garlic inputs consumed by the respondents and the grades reported in the Azadpur data, the Department has previously found that grade SA garlic represents garlic 55 mm and above in size while garlic 40 mm – 55 mm in size are grades SA and A.<sup>53</sup> Accordingly, the Department is able to identify the size-specific SVs that correspond to the raw garlic inputs consumed by the respondents in the POR.

Golden Bird submits that this information relied upon by the Department to determine the sizes associated with each Azadpur garlic grade is incorrect. The respondent, citing to its counsel's visit to the Azadpur market in 2010, argues that the garlic traded at Azadpur is not classified based on any Azadpur standard but instead by the traders themselves. It notes that during the visit, an agent told counsel that the size characteristics of the garlic bulbs vary depending on the garlic supply in the market.<sup>54</sup> Notwithstanding, Golden Bird, in the same section of its rebuttal brief, also argues that "the business practice in Azadpur APMC market tells us that grade A garlic is a classification for the best-quality and largest-sized garlic . . . of 55 mm and above."<sup>55</sup> Golden Bird appears to argue that the Azadpur grades are not associated with a specific size but then suggests that "business practice in Azadpur" indicates that sizes do, in fact, correspond to Azadpur grades. Moreover, while the Department has consistently relied on the India Market

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<sup>49</sup> See Garlic 13 IDM at Comment 2; see also Fresh 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 37321 (June 27, 2011) and accompanying Issues and Decision Memorandum at Comment 3.

<sup>50</sup> Id.

<sup>51</sup> Id.

<sup>52</sup> See Jining Yongjia.

<sup>53</sup> See Memorandum to the File regarding, "Fresh Garlic from the People's Republic of China – 16th Administrative Review – Surrogate Values for the Preliminary Results," dated November 30, 2011 (Preliminary Surrogate Value Memorandum) at 4.

<sup>54</sup> See Golden Bird Rebuttal Brief at 10.

<sup>55</sup> Id.

Report and its updates as support for the size-grade relation at Azadpur, Golden Bird provides no basis upon which to base its claim that grade A garlic is garlic of 55 mm in size and above. The Department recognizes that there will be some variability in the sizes sold under each grade classification and that seasonal availability of garlic may, in fact, affect the size sold. This corresponds with the range of sizes that are established in the India Market Report and India Market Report Update upon which the Department has relied for the size-grade classification.<sup>56</sup> There is to be expected some range of sizes within the grade and, as an extension to this, it is also reasonable to expect some sizes will be categorized in other grades. As such, the report detailing Golden Bird's counsel's visit to the Azadpur market provides no new evidence on the record that the size-grade classification relied upon by the Department is in any inaccurate. Accordingly, the Department will continue to rely upon this classification scale when categorizing the garlic sizes reported by the respondents.

### C. Broad Market Average

We find that, based on the size and scope of the Azadpur market data and the volume of goods traded at the market, the data represent a broad market average. In past cases, we have found official government publications to be reliable and credible sources of information.<sup>57</sup>

We note that each bulletin states that Azadpur is an autonomous body of the government of the National Capital Territory (NCT) of Delhi. As we have noted in previous reviews, the Azadpur market is touted as one of the largest fruit and vegetable markets in Asia and has become a "National Distribution Centre" for important Indian agricultural products, such as garlic.<sup>58</sup> Because the Azadpur daily bulletin is an Indian government entity, we find it to be a reliable source of information for SVs.

When calculating SVs, it is the Department's practice to use country-wide data instead of regional data when the former is available, and the CIT has affirmed this practice.<sup>59</sup> Moreover, we attempt to find the most representative and least distortive market-based value because the more broad-based the value, the greater the likelihood that the value is representative.<sup>60</sup> A careful examination of the Azadpur daily market bulletins shows that the Azadpur data represents a reliable and credible representation of grade-specific raw garlic inputs used in the production of fresh garlic by the respondents. According to the India Market Report, larger, high-quality garlic is produced in the "long-day zone" in India,<sup>61</sup> which includes the states of Haryana, Himachal Pradesh, Jammu and Kashmir, Punjab, Uttaranchal, and the northern parts of Uttar Pradesh.<sup>62</sup> During the POR, nearly 26,000 MTs of garlic arrived at the Azadpur market,

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<sup>56</sup> See Petitioners July 12, 2011 Submission at Appendices 1 (India Market Report), 3 (India Market Report Update).

<sup>57</sup> See Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 69 FR 75303 (December 16, 2004) and accompanying Issues and Decision Memorandum at Comment 1.

<sup>58</sup> See, e.g., Garlic 13 IDM at Comment 2.

<sup>59</sup> See Wuhan Bee Healthy Co., Ltd. v. United States, 29 CIT 1275, 1277-78 (CIT 2005).

<sup>60</sup> See 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) and accompanying Issues and Decision Memorandum at Comment 5.

<sup>61</sup> "Since the long-day zone gets sunlight for longer hours this facilitates formation of larger bulbs (generally greater than 40 mm) . . . ." See India Market Report at 7.

<sup>62</sup> Id. at 16.

from these aforementioned states, except Uttaranchal, as well as from the states of Gujarat, Madhya Pradesh and Rajasthan.<sup>63</sup> As such, the garlic prices provided in these daily market bulletins provide an appropriate basis for calculating SVs.

Additionally, the Department notes that, when identifying the SVs, we have obtained Azadpur market prices covering an entire year, therefore ensuring that the prices are not distorted by the seasonal fluctuations in the garlic market. Thus, we find that the Azadpur data is geographically and temporally representative of the garlic industry in India. It is therefore a reliable and credible representation of a broad market average.<sup>64</sup>

#### D. Contemporaneity

The Azadpur data for grades A, B and C are contemporaneous. The Azadpur data for grade SA is not contemporaneous. Comment 6 below addresses arguments raised regarding the non-contemporaneity of Azadpur grade SA data.

#### E. Tax and Duty Exclusive

The Department has previously found the Azadpur prices to be tax and duty exclusive.<sup>65</sup> Conversely, we note that both respondents have stated that their raw garlic input purchases are subject to a value-added tax of 13 percent.<sup>66</sup> Despite the apparent imbalance with respect to the impact of taxes on the Azadpur prices and the prices paid by the respondents, we continue to find, based on all the record evidence that the Azadpur prices are an appropriate and reliable basis for calculating SVs.

#### **Farmgate Prices**

Parties have made arguments regarding farmgate prices and their relation to the selection of an SV which focus mainly on two issues – whether Azadpur prices are farmgate prices and whether the two respondents purchase their garlic at farmgate prices. Based on our analysis of information on the record, the Department finds that neither the Azadpur prices nor the prices paid by the respondents are farmgate in nature.

Prior to discussing the two main issues presented regarding farmgate prices, the Department must first evaluate the definition of farmgate prices. Although the respondents make repeated arguments that they purchase at “farmgate prices,” neither has fully defined what they interpret the term to mean. Xinboda seems to imply that because it purchases garlic from “farmers” surrounding its facility, it is purchasing at “farmgate” prices. In Jinan Yipin, the definition of farmgate included therein states that a garlic farmgate price is the purchase price of raw garlic as

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<sup>63</sup> See Petitioners July 29, 2011 Submission at Exhibits 2, 3A, 3B.

<sup>64</sup> The CIT, in Jining Yongjia, has supported the Department’s conclusion that the Azadpur data is a broad market average based on Azadpur’s statements that it is the largest market in Asia and serves as a national distribution center within India.

<sup>65</sup> See 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) (Garlic 11) and accompanying Issues and Decision Memorandum at Comment 2.

<sup>66</sup> See Xinboda November 16, 2011 Second Supplemental Questionnaire Response at 13; see also Golden Bird November 14, 2011 Second Supplemental Questionnaire Response at 16.

it is harvested with no further processing or handling, and including no additional charges.<sup>67</sup> In other words, purchasing garlic at a farmgate price means that the garlic is priced to reflect its state immediately following harvest. It is garlic, immediately following harvest, that has not been sorted, cleaned, processed, stored, transported or in any other way handled or modified. The addition of any costs related to these actions results in the price no longer being a farmgate price. It is on this basis that the Department has conducted its analysis of the arguments regarding farmgate prices.

Both Xinboda and Golden Bird contend that the raw garlic inputs they consumed during the POR were purchased directly from the farmers at farmgate prices.<sup>68</sup> Petitioners contend that there is no possible way the respondents would have been able to purchase the amount of raw garlic inputs they consumed directly from farmers throughout the year, especially during the months after harvest when garlic can only be preserved by holding it in cold or CA storage.<sup>69</sup> As such, Petitioners contend that the respondents are not purchasing raw garlic inputs at farmgate prices.

Were the respondents to have purchased raw garlic inputs at farmgate prices, they would have purchased raw garlic fresh at the field during the harvest. The garlic that they purchased would not been cleaned, sorted by size, bagged, transported or otherwise handled. Upon taking possession of the garlic, our respondents would have (1) sorted the garlic (by size, quality, etc.); (2) cleaned it of all stems, root plates, etc.; (3) transported it; and (4) stored it. Information on the record of this review shows that all the raw garlic inputs purchased by the respondents during the POR were sorted by grade/size, cleaned, bagged, stored, and then transported to the processing facility.<sup>70</sup> As such, the respondents' claims that they purchase any raw garlic inputs at farmgate prices are unsupported by the record.

The fact that a significant portion of the raw garlic inputs processed by the respondents must have also been cold/CA stored<sup>71</sup> further demonstrates that neither company makes its purchases at farmgate prices. Xinboda has stated that "in the months other than the harvest season, Dadi also purchased from farmers who rented space and stored the raw garlic inputs in cold storage facilities. . . ."<sup>72</sup> Golden Bird has similarly stated that "no matter how long the raw garlic was kept in cold storage, the costs had been included in the purchase price" paid by Golden Bird's processor, Cangshan.<sup>73</sup> As noted in Xinboda's statement, farmers rented space for cold storage thus indicating that the cold storage facilities were not located on the farms that supplied the raw garlic inputs. While there is no evidence on the record showing where the cold storage facilities that stored the raw garlic inputs purchased by the respondents were located, the fact that the very use of the storage facilities would have resulted in additional costs being incurred on the part of the seller. Therefore, that both respondents report purchasing raw garlic inputs from local farmers does not address the issue that these local farms had to clean, sort and bag the harvested raw garlic, rent space to store the raw garlic, cover the costs of storing the raw garlic (i.e., electricity, labor) and pay for the transportation and other related costs of moving the raw garlic

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<sup>67</sup> See Jinan Yipin, Slip Op. 11-119 at 1257.

<sup>68</sup> See Xinboda Case Brief at 21; see also Golden Bird Rebuttal Brief at 7.

<sup>69</sup> See Petitioners Case Brief at 5-17.

<sup>70</sup> See, e.g., Petitioners August 29, 2011 Submission at Exhibit 2.

<sup>71</sup> See Comment 2, above.

<sup>72</sup> See Xinboda November 16, 2011 Second Supplemental Questionnaire Response at 13.

<sup>73</sup> See Golden Bird August 19, 2011 Supplemental Questionnaire Response at 14.

to the cold storage facility and then sometimes delivering the raw garlic inputs from the cold storage facility to the respondent's processing plants. Regardless of the amount of the costs involved, it is reasonable to conclude that the party incurring these costs would have added them to any price charged for the corresponding garlic; Golden Bird's statements support this conclusion. As such, the prices paid by the respondents for any raw garlic inputs are not farmgate prices as defined in Jinan Yipin.

Both Petitioners and Xinboda note that the garlic harvest in the PRC takes place between the months of May and early June, after which raw garlic can be dry stored for up to three months, cold stored for up to six months, or CA stored for up to 11 months.<sup>74</sup> It is reasonable to conclude then that garlic processed by the respondents from June through mid-September was likely sold out of dry storage.<sup>75</sup> By extension, we can surmise that garlic the respondents processed in the months of September through May came out of cold or CA storage. A review of the raw garlic input purchases reported by both Xinboda and Golden Bird shows that both companies purchased and processed a significant portion of their raw garlic inputs during the period where cold or CA storage would have been necessary.<sup>76</sup> The fact that most of the raw garlic inputs were also cold or CA stored further indicates that the respondents do not purchase raw garlic inputs at farmgate prices

Additionally, a review of information on the record indicates that each respondent orders raw garlic inputs based on bulb size.<sup>77</sup> As noted in the Xinboda verification report from the previous administrative review, when the Department inquired as to how Xinboda knows it is receiving the type of garlic the customer has requested, the company stated that ". . . the farmers only bring the size and type of garlic that is required for the order that is being processed."<sup>78</sup> This requires the farmer selling the garlic to have gone through the raw harvested garlic, cleaned it up, sorted it based on size and type, placed it into large mesh bags, and, finally, delivered it to Xinboda's processor Dadi.<sup>79</sup> Likewise, Golden Bird clearly specifies size when it is ordering its raw garlic inputs from its suppliers and, therefore, its raw garlic input purchases will also have been sorted.<sup>80</sup> Accordingly, it is reasonable to conclude that these costs are included in the prices that the respondents pay for their raw garlic inputs. These sorting and handling costs would have been incurred throughout the POR as they would have been necessary for every order placed by the respondents. As such, the Department finds that this further illustrates that the respondents' claims to purchase raw garlic inputs at farmgate prices are unsupported.

Petitioners, additionally, hold that it is not possible that the respondents purchased raw garlic inputs directly from farmers through the entire course of the POR. Specifically, they maintain that evidence on the record indicates that the majority of Chinese garlic farmers are small-scale producers who would not be capable of supplying the consistently large, frequent purchases

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<sup>74</sup> See Petitioners Rebuttal Brief at 11; see also Petitioners' October 5, 2011 Submission at 19-24.

<sup>75</sup> See Petitioners' October 5, 2011 Submission at 19-24.

<sup>76</sup> See Petitioners Case Brief at 9-10.

<sup>77</sup> See, e.g., Golden Bird November 16, 2011 Second Supplemental Questionnaire Response at Exhibit 8a; see also Xinboda November 16, 2011 Second Supplemental Questionnaire Response at Exhibit 15.

<sup>78</sup> See Petitioners August 29, 2011 Submission at Exhibit 2.

<sup>79</sup> Id.

<sup>80</sup> See Golden Bird November 16, 2011 Second Supplemental Questionnaire Response at Exhibit 8a.

made by the respondents.<sup>81</sup> Moreover, Petitioners contend that neither the farmers nor Xinboda have the equipment necessary for transporting garlic from a farm to Dadi's facilities. Petitioners claim that the distances Xinboda reported between the farms and Dadi's processing facilities indicate the reliance on third party intermediaries responsible for long-term storage and distribution. Further, Petitioners point to news articles and other publications that state that intermediaries control the distribution of much of the Chinese garlic.<sup>82</sup> Taken together, Petitioners contend that the only possible method in which the respondents would have been able to acquire and have delivered the large amounts of raw garlic inputs that they frequently purchased throughout the year would have been through the reliance on intermediary garlic merchants.<sup>83</sup>

In reviewing Petitioners' arguments, the Department does not agree that the information placed on the record sufficiently demonstrates that the respondents purchased from intermediary garlic merchants rather than farmers. Petitioners have not provided any information which directly demonstrates that either respondent did not purchase its raw garlic inputs from farmers. As such, there is no information on the record with respect to whether sellers of the raw garlic inputs at issue had the capacity to grow the garlic that they sold to the respondents. Petitioners' contention that intermediaries are coordinating the distribution of garlic, given the amount of raw garlic inputs consumed by the respondents, is again not supported by any record evidence. As such, the Department has no basis to conclude that intermediaries are in any way involved in the distribution of the raw garlic inputs supplied to the respondents. However, the fact that the Department cannot corroborate or disprove Petitioners' statements does not negate the fact that record evidence and the respondents' own admissions indicate that the raw garlic inputs consumed by the respondents have been stored, sorted, bagged, and transported to the respondents' processing facilities.

Since the 2004-2005 administrative review, the Department has used the intermediate input methodology to value raw garlic inputs used in the production of subject merchandise.<sup>84</sup> Both Xinboda and Golden Bird state that, if the Department relies on the intermediate input methodology to calculate an SV for raw garlic inputs in this administrative review, it must use a farmgate price as the SV.<sup>85</sup> In support of their argument, they cite to Jinan Yipin as evidence that the Department must select a farmgate price as the SV for raw garlic inputs. Yet, Jinan Yipin does not require the Department to select a farmgate price when identifying an SV for raw garlic inputs; rather, it requires that the Department select an SV that is most representative of the input being valued.<sup>86</sup>

Xinboda also argues that the Department should not continue to use Azadpur data since information on the record indicates that the Azadpur market is restrictive and monopolistic and therefore, not representative of the farmgate price paid by the respondents.<sup>87</sup> The GOI report in question states that the APMC market system in India (of which Azadpur is part) has provided

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<sup>81</sup> See Petitioners Rebuttal Brief at 13.

<sup>82</sup> Id. at 8.

<sup>83</sup> Id. at 13.

<sup>84</sup> See Garlic 11.

<sup>85</sup> See Xinboda Rebuttal Brief at 13; see also Golden Bird Rebuttal Brief at 6-7.

<sup>86</sup> See Jinan Yipin at 1267-1268.

<sup>87</sup> See Xinboda Case Brief at 44-45.

no help in allowing free and direct marketing of products and that the state-controlled markets have prevented private investment in the sector. Additionally, while the APMC market system was intended to help farmers obtain higher prices, it has resulted in an increase in the cost of marketing which results in farmers obtaining low prices.<sup>88</sup> First, as noted above, the Department has found that the respondents do not pay a farmgate price for their raw garlic inputs. Second, the report does not, in any way, state that the sales prices at the APMC markets, including Azadpur, are distorted. To the contrary, it only states that Indian farmers may earn less for their produce. As described above, the Department, when identifying the SV at issue, is not focused on the price the farmer receives but is instead focused on the price a processor would pay. The amount of the Azadpur sales price apportioned to Indian farmers is not material to this analysis. Moreover, if, as the respondents elsewhere claim, all Indian processors must purchase their produce through these markets in India, it is reasonable for the Department to rely on this data as all markets would reflect the price of raw garlic in India.

### **Basis for Adjustments to Azadpur Data**

As discussed above, both Xinboda and Golden Bird maintain that Azadpur is not the best available information for the SV of their raw garlic inputs. However, they contend that, if the Department continues to rely on Azadpur, a series of adjustments must be made to the Azadpur prices to ensure they better reflect respondents' experience. Petitioners argue that the Department should continue relying on Azadpur prices as the best available information and that no adjustments are necessary, even arguing that the adjustments made by the Department in the Preliminary Results should not be made for these final results.

The respondents have made a number of arguments regarding how the Department must adjust the Azadpur prices for all the expenses that have led up to the garlic price on the Azadpur market. In particular, Xinboda argues that the Azadpur garlic prices are "laden with additional costs" that Xinboda does not pay. In making this argument, Xinboda holds that the Department should tailor its choice of SV to Xinboda's exact experience. We disagree that such an exercise would be appropriate, absent unusual circumstances. The Department notes that the CIT in Longkou states:

Of course, a surrogate value must be as representative of the production process in the NME country as is practicable, if it is to achieve the statutory objective of assigning dumping margins as accurately as possible. This, however, does not mean that Commerce must duplicate the exact production experience of the NME manufacturers at the expense of choosing a surrogate value that most accurately represents the fair market value of subject merchandise in a hypothetical market-economy China.<sup>89</sup>

Thus, the Department is not required to duplicate the exact experience of an exporter when calculating SVs but rather must select from among the available SVs those that permit the Department to calculate the most accurate dumping margin possible. While Xinboda argues that the nature of Azadpur prices are significantly different from the prices it pays for raw garlic input, the Department's calculation of an SV is meant to broadly reflect what the respondent's

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<sup>88</sup> See Xinboda January 6, 2012 Surrogate Value Submission at Exhibit 2.

<sup>89</sup> See Longkou, 617 F. Supp. 2d at 1363 (citing Nation Ford).

costs would be if it were operating in a market-economy country. There is no information on the record that demonstrates that the Azadpur data does not broadly reflect the costs of raw garlic in India.

As support for its arguments that the Azadpur prices must be adjusted so that they reflect the price level at which Xinboda claims it makes its purchases of raw garlic inputs, Xinboda placed two documents on the record: the aforementioned Market Research Report and a Researcher Declaration.<sup>90</sup> The Department has fully analyzed each these documents and the information contained therein. As discussed in detail below, these two documents are replete with flaws and inconsistent statements. Therefore, neither document can serve as a reliable basis for any further adjustment to the Azadpur data. The only adjustment that the Department has continued to make is to remove the seven percent market commission and fee that it has traditionally deducted from the average Azadpur price in an effort to capture the price at its moment of arrival into the market.<sup>91</sup> This is important because, as we noted above, the Chinese respondents do not appear to purchase their raw garlic inputs in a market such as Azadpur and, therefore, we have not included the Azadpur market commissions and fees in the SV calculations for the respondents.

Xinboda also argues that the CIT, in Jinan Yipin, found the Azadpur large-bulb garlic to represent a specialty product which is not representative of the commodity that Xinboda purchases.<sup>92</sup> First, the Department points out that the CIT in Jinan Yipin did not find large-bulb garlic in India to be a specialty product but instead found that information on the record of that proceeding indicated that, to the extent specialty seeds were required to grow the large-bulb garlic in India, it was not sufficiently product-specific to the Chinese producers.<sup>93</sup> Moreover, we note that, as explained in this document, Azadpur data, as well as other India garlic information on the record indicates that large-bulb, good-quality garlic is readily available in the Indian market. There is no evidence on this review that large-bulb garlic in India is marketed as a specialty product. As such, there is no basis to find that there are additional costs for the large-bulb garlic sold at Azadpur.

Consequently, there is insufficient information on the record to demonstrate that the prices paid by the respondents and the Azadpur prices (net of the market's commission and fees) are fundamentally different. While the Department notes that there are likely some differences between the two prices (i.e., we recognize that the respondents do not appear to purchase their raw garlic inputs at a market such as Azadpur), we find that the prices are reasonably similar in nature. As Xinboda correctly notes, Zhengzhou Harmoni and Nation Ford state that the Department must strive to select an SV that is representative of the input good.<sup>94</sup> On this basis, the Department finds that it has correctly selected Azadpur prices as the basis for the SV because the Azadpur garlic prices, as the garlic enters the Azadpur market, are reasonably reflective of the raw garlic inputs arriving at respondents' processing facilities.

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<sup>90</sup> See Letter from Xinboda to the Department regarding "Fresh Garlic from China – Surrogate Value Submission – Final – APO Research Statements Attached," dated January 6, 2012 (Researcher Declaration) at Attachment "Survey of Garlic Offerings - Azadpur Market, New Delhi."

<sup>91</sup> See Preliminary Surrogate Value Memorandum at 4.

<sup>92</sup> See Xinboda Case Brief at 38-39.

<sup>93</sup> See Jinan Yipin, Slip Op. 11-119 at 1267-1268.

<sup>94</sup> See Zhengzhou Harmoni; see also Nation Ford.

### **Issues with the Market Research Report and the Researcher Declaration**

Xinboda and Petitioners have both cited to the Market Research Report<sup>95</sup> and the Researcher,<sup>96</sup> both of which were placed on the record by Xinboda on January 6, 2012, to support their arguments regarding raw garlic input valuation. However, as explained below, the Department finds that neither of these documents is reliable, and, as such, has not relied on any data, information or statements in these submissions for purposes of the final results in this administrative review.

As an initial matter, Xinboda contends that its Market Research Report is record evidence that the Department must consider for the final results of this review.<sup>97</sup> Xinboda notes that, in light of changes at Azadpur, it “contracted a reputable and independent research group in India to collect information, analyze, and report on the value chain of garlic in India.”<sup>98</sup> Moreover, Xinboda, citing to the CIT consistently upholding the Department’s reliance on Petitioners’ research report and updates, argues that, absent contradictory evidence, the Department should accept the Market Research Report as the best available information for determining the SV for raw garlic input prices consumed by the respondents.<sup>99</sup> The Department concurs that it is obligated to consider the Market Research Report but, as is the case with all factual information placed on the record of a proceeding, the Department must also evaluate the Market Research Report to determine whether it is reliable.

As Xinboda points out, Jinan Yipin stated that “[i]t is hoary black letter law that the “self-serving” nature of evidence goes (at most) to its weight, not its admissibility.”<sup>100</sup> The Department does not contest the Market Research Report’s admissibility but, before we can determine whether it is, as Xinboda argues, the best information available, we must evaluate its reliability. In the particular case of a research report, the Department initially considers four factors: (1) the source and accuracy of the data; (2) explanation of the analysis/calculations; (3) whether the underlying raw data was provided; and (4) explanation of how the data was collected, sorted and analyzed. This analysis ensures the Department understands the methodology incorporated into the analysis and can assess whether the conclusions made in the report are based in fact. The following discussion addresses the Department’s analysis of the Market Research Report and the Researcher Declaration.

An initial review of Market Research Report identifies three general discrepancies that the Department finds problematic. First, Xinboda stated that it commissioned the report<sup>101</sup> but, on the first page of the report in the section “Project Brief,” it states that a leading exporter who is interested in garlic trading commissioned the report as a comprehensive study of the Indian garlic production and consumption market to develop trading strategies.<sup>102</sup> Due to the nature of the information, the Department cannot reveal the name of the exporter, but notes that there is no record evidence indicating that the “leading exporter” is Xinboda or is in any way affiliated with

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<sup>95</sup> See Market Research Report.

<sup>96</sup> See Researcher Declaration.

<sup>97</sup> See Xinboda Case Brief at 42.

<sup>98</sup> Id. at 35.

<sup>99</sup> Id. at 42-44.

<sup>100</sup> Id. at 42-43.

<sup>101</sup> Id. at 35.

<sup>102</sup> See Market Research Report at 4.

or is part of Xinboda. As such, Xinboda's statement that it commissioned the report appears to conflict with the statement in the report. In the second discrepancy, the Department notes an issue with the timing of some of the data. Specifically, parts of the data regarding garlic prices and quantity included in the report go through November 2011.<sup>103</sup> However, the cover letter to this report is dated from early 2011, many months before the data would have been available.<sup>104</sup> This discrepancy raises the question about when the report was actually produced and finalized. While this may simply be the result of a clerical error, it may equally support the Department's findings below that there are significant problems with the data provided in the report. Finally, and of most concern, is that the report specifically includes a section that clearly states that an analysis was conducted of the data obtained and, the outcome of that analysis was used in completing the report. However, the report does not include any of the actual analysis performed or even an explanation of the methodology used to conduct the analysis. As a result, the total lack of analysis means that the Department cannot review how the data used as the basis of the report was collected, compiled, analyzed and incorporated into, or excluded from, the final conclusions.

Furthermore, the Department's examination of the Market Research Report, based on the criteria established above, yielded a number of more specific issues. The report provides information regarding garlic price and quantity and contains a number of statements regarding the garlic industry in India. However, there is little supporting documentation, analysis or raw data to corroborate these statements and information. Additionally, the Department has found a number of discrepancies in the data, as well as a number of unclear findings that call into question the overall reliability of the report. Finally, where the Department was able to obtain the source/raw data referenced in the report from an outside source, it found numerous instances where the information in the report is not accurate, further calling into question the reliability of the data referenced in the report.

First, a review of the Market Research Report shows that the information collected as the basis for the analysis is categorized into "primary data" and "secondary data." There are three "sources" of primary data:<sup>105</sup> (1) meetings with various garlic experts, the results of which are summarized in Annexure-3 ("Major market garlic arrival and price across major market"); (2) data from Global AgriSystem, used to determine the regions to be surveyed; and (3) responses to questionnaires provided to growers, traders and horticultural department officials at specific locations. Secondary data included various garlic trade and price statistics from multiple sources.<sup>106</sup> Because part of the Department's analysis requires a review of the sources of the data, it is important that the report include this information or provide clear citations to publically-available data for the Department to access and review. However, our analysis found that the majority of data upon which the conclusions in the report are based are neither cited nor provided. As such, the report does not provide the type of information needed to check the accuracy of its analysis and conclusions.

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<sup>103</sup> See, e.g., Market Research Report at 36.

<sup>104</sup> The entirety of the cover letter is double bracketed. *Id.* at cover letter. Therefore, the actual date of the letter is business proprietary information not subject to release to any parties in this proceeding. However, the Department notes that the date on the cover letter is more than six months prior to the latest data provided in the report (November 2011).

<sup>105</sup> *Id.* at 6 and 7.

<sup>106</sup> *Id.* at 7.

These concerns regarding unsupported data are especially evident in the primary data. Annexure-3 (“Major market garlic arrival and price across major market”) lists monthly arrival prices and quantities for major markets in India. The information in this chart was reportedly based on meetings with growers, traders, commission agents and agriculture officials.<sup>107</sup> However, the Market Research Report does not include any documentation for any of these meetings and Annexure-3 is simply a list of data rather than the summarization of various meetings as described by the writers of the report. It lacks supporting data or documentation showing where and how the information was obtained, and what, if any, adjustments were made to these figures. As such, it is impossible for the Department to determine if the information in this annexure, one of the key sources of data in the Market Research Report, is accurate or reliable.

Regarding the regions surveyed, the Market Research Report states that data from Global AgriSystem was used. Based on this information, the report was focused on three “important” production belts:<sup>108</sup> Mandsaur/Neemuch (Madhya Pradesh);<sup>109</sup> Mainpuri/Gihror (Uttar Pradesh);<sup>110</sup> and Kullu (Himachal Pradesh).<sup>111</sup> However, the Market Research Report does not provide any raw data, charts or otherwise supporting documentation from Global AgriSystem regarding these or any other production belts in India. Thus, there is no evidence demonstrating that these are the only production belts that are “important” or that those which were excluded were less “important” and therefore, the Department is unable to determine if data provided for these three production belts are reflective of the Indian garlic market in general.

The third primary data sources upon which the Market Research Report relies are responses to three types of questionnaires developed specifically for this report – one for growers, one for traders and one for horticultural department officials.<sup>112</sup> The Market Research Report includes copies of the questionnaires<sup>113</sup> and a list of the individuals who responded to this survey.<sup>114</sup> However, none of the actual responses or data collected from these questionnaires were provided in the report. As such, the Department had no way to evaluate whether the information collected in the questionnaire responses was complete or properly analyzed, much less whether the responses can be considered representative of the Indian garlic market in general.

Secondary data in the Market Research Report encompasses a wide variety of sources relied upon to provide information on trading activity, production and customs regulations. The Department notes that many of these sources are not specifically identified, and thus there is no way to evaluate the supporting documentation to confirm the report’s reliance on these sources. For example the report states “{f}or the study different data from sources like FAO Stat, ITC etc,

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<sup>107</sup> Id. at 6. “Primary data was collected by visiting various growers, traders, commission agents, APMC officials; information collection schedule is attached at Annexure-3.”

<sup>108</sup> Id.

<sup>109</sup> Id. at 23-31.

<sup>110</sup> Id. at 31-38.

<sup>111</sup> Id. at 38-45.

<sup>112</sup> Id. at 7.

<sup>113</sup> Id. at 68-78.

<sup>114</sup> Id. at 78.

were studied”<sup>115</sup> and “{i}nformation was collected from libraries, research organizations, and journals.”<sup>116</sup> The Department does note that in certain instances the data provided does include an apparent citation to the source. For example, on page 10 at “Figure 1: Production Pattern,” the chart is based on information from the Spice Board.<sup>117</sup> However, the underlying data obtained from the Spice Board is not provided.

Xinboda states that if the Department continues to rely on Azadpur prices in the final results, the Department must deduct mark-ups included in the price of large-bulb garlic sold at Azadpur.<sup>118</sup> Specifically, Xinboda contends that, based on the information contained in the Market Research Report, the price of Azadpur garlic has been “built up,” including costs related to commissions, packing costs, wholesaler margins, retailer margins and premiums for large-bulb garlic. Because, according to Xinboda, such mark-ups are included in the value chain research discussed in the report, the Department must back out these costs if it is to use Azadpur price data for the raw garlic inputs purchased by the respondents. However, no supporting documentation demonstrating how any of these figures were obtained and/or calculated for each belt has been provided with the report. For example, the report states that there is a 25 percent retailer margin mark-up for garlic in the Uttar Pradesh region.<sup>119</sup> However, the chart does not cite to any source documentation demonstrating that there is in fact a 25 percent retailer margin mark-up for that region. As such, there is no way for the Department to determine if these figures are accurate or representative of actual expenses in the three garlic value chains or, for that matter, in the Indian garlic market, in general.

In addition to the fact that the Market Research Report lacks supporting documentation and data to allow the Department to check the accuracy of the statements and conclusions therein, the Department has identified numerous inconsistencies and problems with the data that was included in the report. A review of the data and figures provided for the Madhya Pradesh<sup>120</sup> section of the report demonstrate the problems that the Department has identified throughout the document. The Market Research Report provides two charts on page 36: (1) the “Seasonal Farm Gate Prices and the Price Trend” chart which breaks out farmgate prices between peak-harvesting season in India (March through May) and the rest of the year; and (2) “Table 4: Arrivals at APMC Neemuch, MP” which lists garlic quantity and prices arriving at the Neemuch mandi (or market) for all of 2010, and April through November of 2011. As an initial matter, the Department notes it is unclear what year the first chart regarding farmgate prices is supposed to represent, as this chart does not provide any dates. However, since Table 4 provides arrival information for 2010 and 2011, it is reasonable to presume that the farmgate prices are for one of these years. Additionally, it appears the monthly figures on Table 4 are mislabeled, as the report does not explain why arrival information for January through March of 2011 was not provided.

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<sup>115</sup> Id. at 7.

<sup>116</sup> Id.

<sup>117</sup> Id. at 10.

<sup>118</sup> See Xinboda Case Brief at 37 (“This premium amounts to 100% of the original farmgate price in MP and 37.5% in HP.”).

<sup>119</sup> Id. at 29.

<sup>120</sup> Id. at 31-38.

The farmgate chart on page 36 states that the weight-averaged price for farmgate garlic is 29.38 rupees (Rs) per kilogram (kg).<sup>121</sup> According to the Market Research Report, “{t}he farmgate price is discounted by Rs. 2.5-4/kg indexed to the local mandi price.”<sup>122</sup> Thus, one would reasonably assume the garlic prices at the local Neemuch mandi would have been around 32-34.5 Rs. per kg. in either 2010 or 2011. However, the quantity and price data for arrivals at the Neemuch mandi (*i.e.*, Table 4) do not correspond to these prices. Based on the figures provided in Table 4, the average arrival price for garlic in 2010 was 51.36 Rs per kg.<sup>123</sup> Assuming the arrival information labeled as January through March of 2010 on Table 4 was in fact data for 2011, the average price for arrivals between December 2010 and November 2011 was 42.24 Rs. per kg.<sup>124</sup> In both situations, the price is well above the 34.5 Rs. per kg. arrival price that would reasonably be expected based on the information provided regarding the farmgate prices. The report does not provide any explanation to reconcile the differences in these tables. The fact that the information is unclear, the fact that the figures do not correspond to the information provided raises serious questions about the reliability of this report.

Additionally, the figures in Table 4 do not correspond to the figures provided in Annexure-3. As explained above, Annexure-3 provides monthly arrival prices and quantities for major markets in India based on conversations with experts within the country. On this basis, it appears that Table 4 would be based on the “primary” data of Annexure-3. As such, the monthly arrival figures for Neemuch in Table 4 should correspond to the monthly arrival figures for Neemuch in Annexure-3. However, the Department notes that Annexure-3 has no arrival data for 2011 and only has arrival data for three months of 2010 for Neemuch: August, September and November.<sup>125</sup> Further, the figures in this annexure for these three months do not match the figures in Table 4. For example, Table 4 states that in August of 2010, 29,106 quintals (qtls.) of garlic arrived at Neemuch, with a minimum price of 2,000 Rs. per qtl., a high/maximum price of 14,001 Rs. per qtl., and a modal price of 7,500 Rs. per qtl.<sup>126</sup> In contrast, the figures in Annexure-3 state that in August of 2010, 25,262 qtls. of garlic arrived at Neemuch, with a minimum price of 2,615 Rs. per qtl., a high/maximum price of 11,811 Rs. per qtl., and a modal price of 7,178 Rs. per qtl.<sup>127</sup> A comparison of these two tables for the months of September and November 2010 reveal similar inconsistencies.<sup>128</sup> There is no explanation of the discrepancy between these two figures that are purportedly providing the same information (*i.e.*, arrival quantity and prices at the Neemuch mandi). The fact that the data are not consistent calls into question the accuracy of the information provided throughout the Market Research Report, as well as the conclusions that the report clearly states were based on the included figures. It also indicates that the questionnaire and research information collected by the researchers developing this report may not have been properly organized and analyzed.

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<sup>121</sup> *Id.* at 36.

<sup>122</sup> *Id.*

<sup>123</sup> See Memorandum to File regarding “Fresh Garlic from the People’s Republic of China: Additional Documentation,” dated June 4, 2012 (MTF) at Attachment 1.

<sup>124</sup> *Id.*

<sup>125</sup> See Market Research Report at 55-65.

<sup>126</sup> *Id.* at 36.

<sup>127</sup> *Id.* at 65.

<sup>128</sup> *Id.* at 36, 65.

Furthermore, a review of the international trade sections<sup>129</sup> and the supporting data at Annexure 4 (International Garlic Trade)<sup>130</sup> raise additional concerns about the report's conclusions. In these sections, the data was collected from the Food and Agricultural Organization of the United Nations (FAO), one of the few places in the document in which the source of the data is actually cited. However, a comparison of the FAO data in the report to the data on the FAO website identifies a number of inaccuracies.<sup>131</sup> Specifically, the FAO world garlic production data for 2009 provided in the Market Research Report<sup>132</sup> do not correspond to the information from the FAO website. Most notably, the Market Research Report indicates that the FAO statistics show that India produced 1,070,000 metric tons (MT) of garlic in 2009<sup>133</sup> even though a check of the FAO's data show that India produced 831,100 MT of garlic in 2009.<sup>134</sup> Additional discrepancies can be found when comparing the production reported for the Republic of Korea and Egypt.<sup>135</sup> Further, discrepancies were identified in the data regarding top garlic importing nations for 2003, 2004 and 2006.<sup>136</sup> A comparison of these charts to the FAO website reveals that (1) the import data reported for 2003 was actually the FAO data from 2002,<sup>137</sup> and (2) import data reported for 2004 was actually the FAO data from 2003.<sup>138</sup> Moreover, the "Table 6: Imports of Garlic" chart, states that 36,187 MT of garlic was imported into India in 2005.<sup>139</sup> However, the FAO website indicates that garlic imports into India during 2005 were less than 17,000 MT.<sup>140</sup> Because no explanation or other reason for these discrepancies was provided, the Department can only conclude that the researcher erred in his or her data collection and compilation, or that the report relied upon inaccurate or secondary sources for FAO statistics.

Taken together, there are too many inconsistencies, questions and issues pertaining to data in the Market Research Report to allow the Department to rely on any of the information in the report to analyze SV information and make any adjustments to the Azadpur prices, other than those already made by the Department. Specifically, the report cannot be considered reliable since: (1) much of the data and statements are unsupported by any documentation or data; (2) there are instances where the statements contradict the data provided; (3) where raw data has been provided, the numbers have not been properly copied to the report; and (4) the report does not describe or provide any information regarding the compilation and testing of the data, the analytical framework or the actual analysis itself of the data. Although Xinboda argues that the Department should accept this report as the best available information absent contradictory evidence,<sup>141</sup> the Department's analysis has clearly identified evidence that contradicts the argument that the report is the best available information. Consequently, the Department, in its analysis for these final results, has not placed any weight on the statements and conclusions

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<sup>129</sup> Id. at 49-52.

<sup>130</sup> Id. at 65-68.

<sup>131</sup> A printout of the relevant sections are included in MTF at Attachment 2.

<sup>132</sup> See Market Research Report at 36, 65.

<sup>133</sup> Id. at 65.

<sup>134</sup> See MTF at Attachment 2.

<sup>135</sup> See Market Research Report at 49.

<sup>136</sup> Id. at 67.

<sup>137</sup> Id. at 67; see also MTF at Attachment 2.

<sup>138</sup> See Market Research Report at 67; see also MTF at Attachment 2.

<sup>139</sup> See Market Research Report at 50.

<sup>140</sup> See MTF at Attachment 2. The FAO website provides the top 20 garlic importers for 2005, India is not included on the list. The 20th largest importer during the year was Mexico, which imported 16,908 MT of garlic.

<sup>141</sup> See Market Research Report at 44.

presented in the Market Research Report or any arguments by any party which are based on information within the report.

Xinboda also cited a Researcher Declaration<sup>142</sup> to support its arguments regarding raw garlic valuation in India.<sup>143</sup> In reviewing the Researcher Declaration, the Department finds that a number of the same issues in the Researcher Declaration that it found in the Market Research Report discussed above. As an initial matter, it is not clear whether Xinboda's "Indian researcher" was a market researcher or field expert; the individual reports having worked in "import/export trade for over 20 years."<sup>144</sup> Moreover, the individual who provided this Researcher Declaration made a number of observations based on a single visit to the Azadpur Market on January 31, 2011 during which eight vendors were interviewed. These observations included discussions of the sizes of the garlic sold, the grading system for the garlic, and the market readiness of the garlic sold in Azadpur. While the researcher states that all observations are "{b}ased on research and my discussions with vendors," the Department has not been presented with any research conducted by this individual, nor has any information regarding the vendors (i.e., name, time selling at market, etc.) been provided to corroborate what the Researcher Declaration actually reports. Finally, the signature date (February 2, 2011) does not match the date of the notary public's signature.<sup>145</sup> While this may not be a primary concern, the discrepancy between the date the document was signed and the date the notary public signed, nonetheless, raises additional questions about the Researcher Declaration. Although the affidavit appears to have been drafted and notarized in 2011, it is unclear why it also contains a stamp date of 2010. The lack of supporting documentation and, for that matter, even information on the "researcher" as well as the discrepancy in when the document was signed, make it impossible for the Department to consider the Researcher Declaration a reliable source of information upon which we may base our conclusions.

Therefore, as with the Market Research Report, the Department, in its analysis for these final results, has not placed any weight on the statements and conclusions presented in the Researcher Declaration or any arguments by any party which are based on statements within the declaration.

#### **Comment 6: Whether to Continue Using Azadpur Grade SA Price Data**

##### Xinboda's Arguments

- If the Department continues to use the Azadpur market for calculating raw garlic input SVs, it must use only contemporaneous grade A prices.
- No grade SA has been sold in the Azadpur market since February 2008 and there is no evidence it has been used in any other markets or stores during the POR.

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<sup>142</sup> See Researcher Declaration.

<sup>143</sup> For example, Xinboda have cited to the Researcher Declaration to explain why grade SA garlic was no longer being reported in the Azadpur market. See Xinboda Case Brief at 30.

<sup>144</sup> See Researcher Declaration.

<sup>145</sup> The entirety of the notary stamp is double bracketed. Id. Therefore, the actual date on the stamp is subject to BPI. However, the Department notes that the date on the stamp is not February 2, 2011, the signature date of the document. Even assuming the document is dated in European format, (Day/Month/Year), the signature and notary dates do not match.

- Xinboda’s research supports the fact that grade SA garlic has been subsumed into grade A garlic and, therefore, the Department has no justification for the continued reliance on non-contemporaneous grade SA garlic prices from Azadpur.
- Citing the CIT’s ruling in Jinan Yipin, the Department has no reason for using non-contemporaneous grade SA prices because after February 2008, the grade SA prices were no longer separated from the grade A prices.
- Research from the Alibaba trade website shows grade SA was not available and garlic sized at 30-70 mm is advertized as grade A.

#### Farmlady’s Arguments

- The absence of grade SA in the Azadpur price data suggests that the Azadpur market no longer distinguishes between grades SA and A, with all classified as grade A.
- The Department should use the “best available” contemporaneous Indian garlic prices.

#### Golden Bird’s Rebuttal Arguments

- Use of non-contemporaneous price data where contemporaneous data exists violates the Department’s well-established policy and practice regarding SVs.<sup>146</sup>
- The Department should disregard non-contemporaneous grade SA garlic and instead use contemporaneous grade A Azadpur data.
- The Department used a limited selection of grade SA data for the Preliminary Results; if it continues to use non-contemporaneous data, it should use all data from the database.
- The Department should, based on the sizes reported, classify Golden Bird’s raw garlic input purchases consumed in producing peeled garlic as Azadpur grade B garlic for the final results.

#### Petitioners’ Rebuttal Arguments

- Xinboda’s research on Azadpur is anecdotal and contradictory
- Record evidence shows that the large-bulb garlic was favored for export during the POR.
- The physical characteristics of the respondents’ raw garlic inputs require the use of grade SA prices inflated to the POR.
- Purchases by Xinboda’s producer reflect the need for a market premium in grade SA prices.
- The Jinan Yipin CIT ruling regarding Azadpur prices is not applicable to the facts of this review.

#### Department’s Position

We have continued to use Azadpur grade SA price data, along with grade A data, as the basis of the SV for the respondents’ raw garlic inputs. We note that the size of grade SA garlic is directly comparable to a significant portion of the raw garlic inputs processed by the respondents. Moreover, the Department has consistently found Azadpur price data to be the “best available information,” stating that size-specific garlic prices are preferable because garlic size, as reflected in the various grades, is an important price factor, and grade-differentiated price data allows the Department to calculate even more detailed, and more accurate, NVs. As discussed in

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<sup>146</sup> See Shakeproof Assembly Components Dividio of IL Tool Works, Inc. v. United States, Court No. 05-00404, Slip Op. 06-129 (CIT 2006) (Shakeproof).

detail in Comment 5 above, the Department continues to find the Azadpur price data to be the best available information for this particular proceeding.

As is evidenced by the record of this proceeding, the Azadpur data itself offers the Department numerous options, thus requiring the Department to select which Azadpur data it considers the best available information. For the Preliminary Results, the Department determined the best available information for valuing some of the respondents' raw garlic inputs were grade SA prices, inflated with a garlic-specific wholesale price index (WPI) to the POR. In the briefs, the respondents contend that the Department, by its own standards for selecting the "best information available," should only use the grade A contemporaneous price data, disregarding the grade SA price data. Moreover, the respondents maintain that, based on evidence on the record, grade SA garlic has actually become subsumed into grade A and, therefore, there is no reason for the Department to use grade SA prices.<sup>147</sup>

In analyzing the respondents' arguments regarding Azadpur grade SA garlic being subsumed into grade A garlic, the Department finds many of the arguments are not grounded in fact or are unverifiable. Specifically, Xinboda and Golden Bird argue that market research, including the Market Research Report, and evidence on the record indicate that the large-bulb garlic that Department has considered to be grade SA is now being sold as grade A. As discussed in Comment 5 above, the Department has found substantial problems with the Market Research Report and Researcher Declaration placed on the record by Xinboda and, therefore, finds its conclusions to be unreliable.

Xinboda also maintains that because the Azadpur grade A garlic prices are higher than grades B and C prices, grade A prices include a premium for large-bulb garlic and there is no justification for using non-contemporaneous grade SA.<sup>148</sup> The Department does not dispute that the prices reported for grade A garlic are higher than prices for grades B and C garlic, as is expected of any grade-based system. That said, this difference in prices does not, in any way, support Xinboda's conclusion that grade SA garlic was subsumed into grade A or that using grade A includes the large-sized garlic bulbs classified as grade SA. Moreover, Xinboda contends that its "Alibaba.com" searches reveal that no grade SA garlic is available but that the grade A sizes include what has been considered grade SA.<sup>149</sup> A review of the Alibaba information demonstrates that it does not support Xinboda's argument that grade SA is now part of grade A. First, Xinboda provided the Department with nine advertisements for grade A garlic on "Alibaba.com" but failed to note that they are essentially identical and were posted by the same company,<sup>150</sup> and thus not illustrative of any general market trend. Second, the Alibaba advertisements say "grade A" garlic of a size range of 30-70 mm is being offered; this range covers not only what would be Azadpur grade SA but also Azadpur grades A, B and C. As such, according to these advertisements, virtually all Indian garlic, including small-sized garlic, is now grade A, which the evidence on the record clearly contradicts.<sup>151</sup> Finally, the advertisements do not indicate that this broad "grade A" garlic is in any way classified on the same terms used at

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<sup>147</sup> See, e.g., Xinboda Case Brief at 30.

<sup>148</sup> Id. at 31.

<sup>149</sup> Id.

<sup>150</sup> See Xinboda January 6, 2012 Surrogate Value Submission at Exhibit 8.

<sup>151</sup> See India Market Report; see also India Market Report Update.

the Azadpur market nor do they list a price, indicating they are not serious sales offers.<sup>152</sup> Taken together, Xinboda's additional research does not demonstrate that grade SA garlic is now part of grade A.

Citing to Jinan Yipin, Xinboda argues that, because after February 2008, grade SA garlic was no longer distinct from grade A, the Department has no basis for using non-contemporaneous grade SA price data. According to Xinboda, the CIT supports Xinboda's claim because the CIT, in Jinan Yipin, found grade SA to have previously been part of grade A. As such, the fact that Azadpur ceased reporting grade SA prices in February 2008 means that grade SA was subsumed back into grade A. Contrary to Xinboda's claims, there is no reliable evidence on the record that clearly indicates this to be the case. While the CIT may have ruled that Azadpur grade SA garlic was part of grade A prior to 2006, this in no way proves that grade SA garlic, after February 2008, was subsumed in grade A.

Adding to Xinboda's arguments about what happened to grade SA garlic prices, Golden Bird explains that its counsel's visit to the Azadpur market in September 2010 confirms the fact that large-bulb garlic has become a "normalized" product in the market.<sup>153</sup> In reviewing the Azadpur visit report submitted by Golden Bird, the Department notes that it only reports that grade SA prices are no longer reported by Azadpur as a result of this "normalization." The two discussions of grade SA give no indication that grade SA garlic was subsumed into grade A or that grade A in any way now incorporates what were prices for large-sized grade SA garlic.<sup>154</sup> Just as with the Researcher Declaration, statements in this report that SA garlic is no longer sold at Azadpur only support what the Azadpur daily market bulletins have made obvious, that prices for grade SA have not been reported at the market since February 2008. Golden Bird provides no additional evidence to support the conclusion that "normalized" grade SA garlic has somehow been re-classified as grade A in the Azadpur market and thus, there is no evidence on the record to indicate that the "normalization" of large garlic has resulted in grade SA being subsumed into grade A prices. Golden Bird provides no explanation of what is meant by normalization or any indication that officials at the Azadpur market decided to uniformly consolidate their grading so that grade A conforms to grade SA.

Alternatively, Petitioners suggest that the reason the grade SA data no longer appear in Azadpur is that the large-bulb garlic is in high demand and has been directly exported instead of moving through domestic wholesale prices.<sup>155</sup> Petitioners hold that the Department should continue relying on the grade SA price data on the record, inflated to the POR. However, there is little evidence on the record to support Petitioners' arguments. Consequently, no party has provided the Department with any reliable evidence that clearly documents why prices for grade SA garlic are no longer reported in the Azadpur daily market bulletins; speculation and arguments not based in fact are not sufficient. Accordingly, the Department cannot conclude that grade SA garlic has been subsumed into the reported Azadpur grade A garlic prices and therefore, the issue of contemporaneity must be considered.

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<sup>152</sup> See Xinboda January 6, 2012 Surrogate Value Submission at Exhibit 8.

<sup>153</sup> See Golden Bird Rebuttal Brief at 10.

<sup>154</sup> See Golden Bird July 29, 2011 Surrogate Value Submission at Exhibit 8.

<sup>155</sup> See Petitioners Rebuttal Brief at 25-26.

When identifying the best available information for SVs, the Department, as discussed in Comment 5, relies on certain criteria, among which are product specificity and contemporaneity. For the purposes of product specificity, the Department has consistently found that the size of garlic is a major factor in determining garlic price.<sup>156</sup> As can be seen by reviewing the respondents' purchase information, size was the primary characteristic when they ordered garlic inputs.<sup>157</sup> Accordingly when evaluating the product specificity of SV data in this review, the Department has consistently found the Azadpur data to be the most product-specific as it was the only grade-specific garlic information on the record.<sup>158</sup> Because Azadpur provides grade-specific data, the Department has several grades from which to select when identifying an SV. In the Preliminary Results, the Department found that garlic bulb sizes that range from 55 mm and above are grade SA, and garlic bulb sizes that range between 40 mm and 55 mm are grades SA and A.<sup>159</sup> Specifically, we note that the India Market Report Update states that raw garlic bulbs sized: 40 mm and above could be either grades SA or A; 50 mm and above would likely be grade SA; and 55 mm and above would invariably be classified as grade SA.<sup>160</sup> Therefore, for these final results, we have continued to use grade SA values for raw garlic input sizes that range from 55 mm and above and an average of grade SA and A values for raw garlic sizes that are in ranges from 40 mm to 55 mm.<sup>161</sup>

Using the most specific size data, the Department adjusted the grade SA price data using a garlic-specific WPI to obtain a grade SA value contemporaneous to the POR.<sup>162</sup>

The respondents contend that the Department's continued reliance, in part, on non-contemporaneous grade SA price data instead of wholly relying on contemporaneous grade A data is a violation of the Department's well-established policy and practice regarding SVs.<sup>163</sup> Golden Bird supports the argument that the Department has an obligation to use contemporaneous price data by citing the CIT ruling in Shakeproof, which stated that, all other factors equal, contemporaneous data shall be selected over non-contemporaneous data.<sup>164</sup> While the Department does not disagree with Shakeproof, we note that because the non-contemporaneous grade SA data is more product specific to the respondents' large-bulb raw garlic inputs consumed by the respondents in production of whole garlic and some peeled

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<sup>156</sup> See Garlic 13 IDM at Comment 2; see also Garlic 15 IDM at Comment 3.

<sup>157</sup> See, e.g., Golden Bird November 16, 2011 Second Supplemental Questionnaire Response at Exhibit 8a; see also Xinboda November 16, 2011 Second Supplemental Questionnaire Response at Exhibit 15.

<sup>158</sup> See Comment 5, above.

<sup>159</sup> See Preliminary Surrogate Value Memorandum at 4. No change has been made to this finding in the final results.

<sup>160</sup> See Petitioners July 11, 2011 Surrogate Value Submission at Appendix 5 (page 5).

<sup>161</sup> There is no justification for using A grade garlic prices only because A grade bulbs are of a smaller average diameter than super A grade bulbs, and therefore, less similar to the garlic bulbs Respondents consumed in production. Therefore, because the Respondents have reported sizes of 55 mm and above consumed in the production of whole garlic and some peeled garlic, and because bulb sizes that are 55 mm and above are typically classified as super A grade garlic, we have continued to value the whole garlic bulb using super A grade data from the Azadpur market data. As the CIT has held, "using the price values for A grade garlic would have led to a less accurate result than using just super A grade garlic." See Jining Yongjia at 42-43.

<sup>162</sup> Id. No changes have been made to the garlic-specific index for the final results.

<sup>163</sup> See, e.g., Golden Bird Rebuttal Brief at 8.

<sup>164</sup> Id.

garlic<sup>165</sup> than the contemporaneous grade A data, not all factors are equal in this case and, as such, Shakeproof is not applicable. Furthermore, any contention that the contemporaneous grade A price data is the same as non-contemporaneous grade SA price data is not supported by information on the record of this proceeding. Moreover, as the CIT ruled in Yantai Oriental, while SVs may be more contemporaneous, this alone does “not naturally lead to the conclusion that such data is an accurate reflection of the price paid by . . . producers during the POR.”<sup>166</sup> Yantai Oriental notes that a conclusion that contemporaneous data alone is better is not sufficient; an explanation of why some SV data is selected over other data must be provided. In this case, the Department has explained that grade SA data is more accurate when valuing the largest sizes of raw garlic inputs consumed by the respondents, thus ensuring the most accurate reflection of the price paid by producers.

Accordingly, for the purposes of the final results in this review, the Department has continued to rely on grade SA Azadpur garlic price data, in part, as the SV for the raw garlic inputs. Additionally, Golden Bird points out that, in the Preliminary Results, the Department did not rely on an entire year’s worth of grade SA data when calculating the grade SA price. The Department has used a year’s worth of grade SA data adjusted using a garlic-specific WPI to obtain a value contemporaneous to the POR for these final results.<sup>167</sup>

Finally, Golden Bird argues that, since it only consumed smaller-sized raw garlic inputs, the Department should use only contemporaneous Azadpur grade B garlic prices as the SV for raw garlic inputs consumed in the production of its peeled garlic.<sup>168</sup> However, the record does not fully support Golden Bird’s claim to have consumed only smaller-sized garlic to produce peeled garlic.<sup>169</sup> Therefore, for the purposes of these final results, we find that the company consumes some smaller and some larger raw garlic bulbs in its production of peeled garlic. As such, for these final results, we have used a simple average of Azadpur prices for grades SA, A and B as the surrogate value for the raw garlic inputs consumed by Golden Bird in the production of peeled garlic.

## **Comment 7: Use of Indian Import Statistics for Other Surrogate Values**

### Farmlady’s Arguments

- The statute does not permit the Department to exclude any imports when using the import data as an SV.
- The Department has provided no basis for removing import data from countries that the Department considers to be NMEs when valuing surrogate input values.

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<sup>165</sup> Consistent with the findings in the 12th, 13th and 15th administrative reviews of the antidumping duty order on Fresh Garlic from the PRC., the Department used grade SA to value raw garlic bulbs sized 55mm and above, and an average of grades SA and A to value raw garlic bulbs between 40 mm and 55 mm .

<sup>166</sup> See Yantai Oriental Juice Co. v. United States, Court No. 07-00309, Slip Op. 02-56 (CIT 2002) (Yantai Oriental).

<sup>167</sup> See Preliminary Surrogate Value Memorandum at 4. No changes have been made to the garlic-specific index for the final results.

<sup>168</sup> See Golden Bird Rebuttal Brief at 9.

<sup>169</sup> A complete discussion of this issue can be found in Golden Bird’s Calculation Memorandum. See Memorandum to the File regarding “Fresh Garlic from the People’s Republic of China: Calculation Memorandum for the Final Results of Antidumping Duty Administrative Review – Hebei Golden Bird Trading Co., Ltd.,” dated June 4, 2012.

- By excluding the NME countries, the Department has, for certain input values, excluded a substantial amount of the imports.
- Some of the input values used by the Department in its calculations are aberrational, thus distorting the in-country price equivalent.
- If the Department chooses not to use actual prices in the selected SC, then it must include NME import data while excluding aberrational data.

#### Golden Bird's Rebuttal Arguments

- Golden Bird concurs with Farmlady's arguments and identified what it considers to be some of the "outliers" or "aberrational" data used to value packing inputs.

#### Department's Position

We have continued to exclude imports from NME countries and countries with generally-available export subsidies from Indian import statistics used as SVs for these final results. Moreover, we have not made any additional adjustments to the import statistics used in selecting SVs beyond those exclusions of data that were made in the Preliminary Results.

The respondents argue that the Department has no basis for excluding import statistics from NMEs into India and that the Department should exclude "aberrational" data.<sup>170</sup> We note that the Department, in selecting SVs for many of the inputs used to calculate an NV both historically and in this proceeding, has relied upon Indian import statistics for the good in question. Once the raw data is obtained, it is the Department's longstanding practice to exclude data from certain countries that the Department has found it to provide generally available export subsidies and/or to be an NME. Additionally, the Department removes any data classified under "Unidentified Country" under the premise that the lack of a country name may mean the data is distorted in some way (*e.g.*, from a country that provides export subsidies). While Farmlady contends that the statute requires the Department to use import statistics from all countries (except those with aberrational data) when relying on import data as the basis for an SV, it readily acknowledges the Department's right to exclude from the SV calculation import data from countries identified as providing export subsidies.

The Department considers the PRC to be an NME country, a designation that, as noted in the Preliminary Results, shall remain in effect until revoked by the Department and has not been challenged in this specific proceeding.<sup>171</sup> As a result, the Department's acceptance of the import data for inputs from NMEs into India, as argued by Farmlady, would be in direct contradiction with the Department's longstanding determination that NME prices are unreliable.<sup>172</sup> Consequently, the Department's removal of the data on input imports from all NMEs into India, regardless of how large a proportion of the overall imports they may constitute, is fully consistent with the Department's approach towards NMEs and the selection of SVs based on the best available information in accordance with section 773(c)(1) of the Act. Excluding the entries

<sup>170</sup> See Farmlady Case Brief at 10-12.

<sup>171</sup> See Preliminary Results, 76 FR at 76376.

<sup>172</sup> See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of 1998-1999 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part, 66 FR 1953 (January 10, 2001) and accompanying Issues and Decision Memorandum at Comment 1.

from NME countries, is in line with our determination that NME information does not permit the NV of the subject merchandise to be determined, which is why we are using an SC in the first instance.

Tangentially, Farmlady and Golden Bird argue that the Indian import data used for SV also contain “aberrational” data or “outliers” that skew the input price. Therefore, while Farmlady maintains that the statute does not allow the Department to remove NME import data into India from the SV of prices, it argues that the Department must eliminate what it deems to be “aberrational,” because “[d]isregarding data that are aberrational. . . does not impact the ‘in-country’ price since the ‘in-country’ prices are unlikely to be affected by these particular sales.”<sup>173</sup> This seems to indicate that Farmlady believes that even leaving these erstwhile “aberrational” prices in the SV data will really have no effect on the SV. Moreover, while Golden Bird has identified what it considers to be “outlier” import prices, the respondent has only identified those prices which appear to be high.<sup>174</sup> This would indicate that Golden Bird only considers high prices to be “outliers.” Golden Bird made no effort to explain the standard it used to determine how these high prices were “outliers,” nor did it explain why it did not develop a similar standard for determining whether any low prices are “outliers” as well.<sup>175</sup>

Therefore, through the exclusion of data from NMEs and countries providing general export subsidies, the Department has shown that, where conclusive evidence exists that data from a country is somehow aberrational, it has excluded that data to ensure the SV is the best available information. Accordingly, for the final results of this review, the Department has continued to exclude only the import data from those countries identified as providing generally available export subsidies or being NMEs. Thus, the Department has made no changes the way the import data is filtered since the Preliminary Results.

## **Comment 8: Selection of Surrogate Financial Ratios**

### Xinboda’s Arguments

- In selecting surrogate financial statements, the Department prefers statements from companies that produce the identical merchandise, consume the identical raw material, and have identical/comparable production experience.
- It is the Department’s policy to consider the “specificity, contemporaneity, and quality of the data.”<sup>176</sup>

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<sup>173</sup> See Farmlady Case Brief at 12.

<sup>174</sup> See Golden Bird Rebuttal Brief at Exhibit 8.

<sup>175</sup> The Department finds that there is no evidence on the record of the instant case that demonstrates that any of the Indian import statistics used as surrogate values, including those for labels or boxes are aberrant, unreliable, or unrepresentative. We note that the Department makes its determinations regarding whether a given surrogate value is aberrant or unrepresentative based on the evidence on the record of that case. Respondents have not argued the values for labels or boxes are not specific to what they consumed. Moreover, respondents have not placed information on the record which might show in what way the values for labels or cartons are aberrational (e.g., differ dramatically from those from previous years). Thus, we find there is no evidence on the record of this administrative review which demonstrates that any of the Indian import statistics used as surrogate values, including those for labels or boxes, are aberrant.

<sup>176</sup> See Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of

- The Department should rely on the 2009/2010 annual report of Garlico as the sole source for Xinboda's surrogate financial ratios because it is: the only Indian company (on the record) who processes and sells garlic; it is publicly available; and it is contemporaneous.
- The Department has used financial statements of a producer of the same or comparable product in other reviews.<sup>177</sup>
- Tata Tea's financial data are an unsuitable source for Xinboda's surrogate financial ratios because:
  - the production of tea is not comparable to the production of garlic;
  - Tata Tea is an integrated producer;
  - Tata Tea is not a domestic Indian bulk tea producer;
  - Tata Tea produces almost exclusively branded products;
  - loan agreements on the record indicate that Tata Tea has received countervailable subsidies; and the Department routinely rejects the financial statements of surrogates that benefit from countervailable subsidies.
- If the Department uses financial data from companies other than Garlico as a source for Xinboda's surrogate financial ratios, then the Department must use the financial data from REI Agro and LT Foods. The record lacks evidence that either of these companies received a specific countervailable program, and therefore, there is insufficient information to warrant disregarding them.

#### Farmlady's Arguments

- By selecting Tata Tea's financial statements, the Department is selecting an entity that is not comparable to companies in the Chinese garlic industry.
- If the Department continues to use Tata Tea's financial data, it must:
  - Identify subsidy programs the other companies received and why these companies were disqualified; and
  - Explain why Tata Tea's financial statements, with its global interests outside of India, represent the best available statements for this review.

#### Golden Bird's Rebuttal Arguments

- Tata Tea is not an appropriate source for financial ratios for the reasons stated by Xinboda and Farmlady.
- Garlico provides the best surrogate company for financial ratios because:
  - It uses similar production inputs;

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Targeted Dumping, 75 FR 20335 (April 19, 2010) and accompanying Issues and Decision Memorandum at Comment 13.

<sup>177</sup> Citing Certain Preserved Mushrooms From the People's Republic of China: Final Results of Sixth Antidumping Duty New Shipper Review and Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review, 69 FR 54635 (September 9, 2004) and accompanying Issues and Decision Memorandum at Comment 8; Certain Non-Frozen Apple Juice Concentrate From the People's Republic of China: Preliminary Results of 2001-2002 Administrative Review and New Shipper Review, and Partial Rescission of Administrative Review, 68 FR 40244 (July 7, 2003); Notice of Final Determination of Sales at Less Than Fair Value: Honey From the People's Republic of China, 66 FR 50608 (October 4, 2001) and accompanying Issues and Decision Memorandum at Comment 4; and Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 75 FR 49460 (August 13, 2010) and accompanying Issues and Decision Memorandum at Comment 9.

- It produces similar types of merchandise; and
- The production process between Garlico and the respondents is similar.

### Petitioners' Rebuttal Arguments

- Garlico is unsuitable for use as a surrogate in this review because:
  - The raw garlic inputs used in Garlico's production are significantly lower in quality than the garlic input used by the respondents, since size and appearance is irrelevant to Garlico.
  - Garlico's production process is different than the respondents, as Garlico uses a multi-step process to turn fresh vegetables into goods with long shelf-lives.
  - The respondents produce "fresh" garlic products, while Garlico does not produce "fresh" products.
- Tata Tea's financial statements provide the best basis for calculating surrogate financial rates because:
  - Production and packaging of tea and fresh garlic are comparable;
  - Tata Tea's processing operations are not integrated with tea growing operations;
  - The company is a domestic Indian producer of bulk tea;
  - The use of branded products does not disqualify the company from use;
  - The financial statements are not distorted by subsidies;
- Rice companies identified by Xinboda are not appropriate as both of these companies received countervailable subsidies.
- The financial statements offered by the respondents are not as contemporaneous as Tata Tea's.

### Department's Position

The Department continues to find that Tata Tea's unconsolidated financial statements provide the best information on the record of this proceeding for calculating surrogate financial ratios. The Department has previously found non-integrated tea processing to be a comparable industry to processing fresh garlic.<sup>178</sup> Moreover, there is no evidence in Tata Tea's financial statements that it received countervailable subsidies. We find that that Tata Tea's 2010/2011 unconsolidated financial statements, which cover seven months of the instant POR, continue to provide complete and usable financial data for a non-integrated producer and seller of tea.

Xinboda, Farmlady and Golden Bird have all argued that Tata Tea is not an appropriate surrogate company for calculating financial ratios, and have held that Garlico provides the most appropriate surrogate financial statements. Section 773(c)(1) of the Act directs the Department to base the valuation of the FOPs on "the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate. . ." The Department's criteria for choosing companies to calculate surrogate financial ratios involves considering the public availability, contemporaneity, and quality of the financial statements, as well as their comparability to the respondent's experience.<sup>179</sup> The Department rejects financial

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<sup>178</sup> This decision was based on the reasoning that (1) tea processing is similar to processing the subject merchandise since tea is not highly processed or preserved prior to sale, and (2) because non-integrated producers purchase intermediate inputs rather than growing and harvesting them.

<sup>179</sup> See, e.g., Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review, 77 FR 21734 (April 11, 2012) (KASR) and

statements of surrogate producers whose production process is not comparable to the respondent's production process when better information is available.<sup>180</sup>

The Department finds that, in comparison to Garlico, Tata Tea's financial statements represent a more appropriate surrogate company for financial ratios. As an initial matter, the Department's analysis of Garlico's financial statements shows that the statements contain significant discrepancies and apparent inaccuracies which call into question the overall reliability of the statements themselves.<sup>181</sup> In addition to these inconsistencies and inaccuracies, the Department finds that Garlico's production experience is much less similar to that of Xinboda and Golden Bird than that of Tata Tea's. Finally, the Department finds that the merchandise produced and sold by Tata Tea is significantly more comparable to the merchandise produced and sold by the respondents than what Garlico produces and sells.<sup>182</sup>

While Xinboda holds that Garlico's processing and trading activities are similar to its own, there is no record evidence that supports this conclusion. Xinboda also provides no support for its conclusion that it shares similar purchasing power and position as Garlico. In point of fact, Garlico's financial statements indicate that the company is primarily a food dehydrator and we note that the International Trade Commission report stated that fresh and dehydrated garlic do not share common production methods or facilities.<sup>183</sup>

Xinboda contends that Tata Tea's production process is more extensive by demonstrating the process by which green leaves are processed.<sup>184</sup> Specifically, Xinboda argues that green leaves go through an "extensive" production process which includes: pan firing/steaming; rolling; firing; and packing. However, green leaves encompasses only a fifth of the tea processed by Tata Tea.<sup>185</sup> Additionally, while the production process for peeled garlic (clipping/stemming; peeling; washing; cooling; and packing) is not identical to that of green leaves, the production process is not so dissimilar that it would cause the Department to disregard Tata Tea as a source for surrogate financial ratios.

Xinboda also characterizes Tata Tea as a large, complex company selling various products throughout the world, and has cited to statements throughout Tata Tea's financial statements to

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accompanying Issues and Decision Memorandum at Comment 2; see also 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.

<sup>180</sup> See 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

<sup>181</sup> A complete analysis and discussion of these discrepancies/inaccuracies in Garlico's statements, as well as a comparison of merchandise sold and production experience between Garlico and Tata Tea can be found in the Surrogate Value Memorandum. See Memorandum to the File regarding "Fresh Garlic from the People's Republic of China: Surrogate Value Memorandum for the Final Results of Antidumping Duty Administrative Review," dated June 4, 2012 (Surrogate Value Memorandum).

<sup>182</sup> Id.

<sup>183</sup> See ITC Report at I-7-12.

<sup>184</sup> See Xinboda Case Brief at 68, 69.

<sup>185</sup> Total green leaf consumed 185.36 kgs (in lakhs) (77.64 + 107.72) divided by total tea consumed 881.73 kgs. (in lakhs) equals 20.94 percent. See Chengwu Yuanxiang August 11, 2011 Surrogate Value Submission at Exhibit 2 (Tata Tea's 2010/2011 Financial Statements) (page 87).

support this conclusion.<sup>186</sup> However, the Department finds that the majority of these statements are reflected at the beginning of the financial report (which discuss the activities of Tata Tea and all of its subsidiaries), or in the consolidated portion of the financial statements (which includes information for Tata Tea and all of its subsidiaries). Tata Tea's unconsolidated financial statements<sup>187</sup> reflects a corporate entity which predominately processes and sells tea.<sup>188</sup> Additionally, the company's small export sales<sup>189</sup> and low expenditures in foreign currency<sup>190</sup> indicate that the company is focused on domestic sales. In contrast, Garlico's financial statements reflect a company that produces and sells more complex products.<sup>191</sup>

As discussed above, another one of the Department's criteria for choosing surrogate companies to calculate surrogate financial ratios is contemporaneity of the financial statements. Tata Tea's financial statements cover a longer portion of the POR (November 1, 2009 through October 31, 2010) than Garlico's. Specifically, Tata Tea's statements cover April 1, 2010 through March 31, 2011, seven months of the POR while Garlico's financial statements cover April 1, 2009 through March 31, 2010, covering five months of the POR. As such, the Department finds Tata Tea's financial statements to be slightly more contemporaneous to the POR.

Additionally, the respondents have argued that Tata Tea's financial statements indicate that the company is integrated and received countervailable subsidies. However, the Department finds that: (1) the company's unconsolidated statements show that Tata Tea is non-integrated; and (2) that there is no evidence in these statements that the company received a subsidy under a program that the Department has previously determined to be countervailable.

The producers of both Xinboda's and Golden Bird's garlic are non-integrated processors that purchase raw garlic inputs (rather than growing the garlic themselves) and, therefore, the Department would ideally select a company, in this instance, whose financial statements that reflect non-integrated production. Based on a review of its financial statements, only 7.25 percent Tata Tea's total unconsolidated sales came from integrated production.<sup>192</sup> As such, we do not find that this small percentage of integrated production undermines the usability of Tata Tea's unconsolidated financial statements.

Xinboda argues that Tata Tea's affiliations with companies like Amalgamated Plantations Private Limited (APPL) and Kanan Devan Hills Plantations Private Limited demonstrate that the company is integrated. For example, Xinboda contends that Tata Tea (and its subsidiaries) own 51 tea plantations in India, which produce over 60 million kgs. of tea per year, and more

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<sup>186</sup> For example, Xinboda points to Tata Tea's statements about its global operations and that products sold and manufactured by the company include tea, coffee, mineral water, pepper, cardamom, spices, timber and veneer/plywood. See Tata Tea's 2010/2011 Financial Statements at 36, 115.

<sup>187</sup> Id. at 64-102.

<sup>188</sup> Id. at 69, 87 (Tea sales accounted for 177,759.04 Rs. (in lakhs) of the companies 179,262.12 Rs. (in lakhs) in total sales (99.16 percent)).

<sup>189</sup> Id. at 32, 88 (15,556.48 Rs. (in lakhs)).

<sup>190</sup> Id. at 88.

<sup>191</sup> See Surrogate Value Memorandum.

<sup>192</sup> Of the total raw materials consumed by Tata Tea, only 77.64 kgs. (in lakhs) of the 1,070.65 kgs. (in lakhs) consumed (885.29 kgs. (in lakhs) (tea) + 77.64 kgs. (in lakhs) (Green Leaf (Own Estates)) + 107.72 kgs. (in lakhs) (Purchases)) was from Tata Tea's own estates. See Tata Tea's 2010/2011 Financial Statements at 87.

specifically that Tata Tea purchases approximately 20 percent of its tea directly from APPL. However, regardless of whatever business transactions occurred between Tata Tea and its affiliates or subsidiaries, any harvesting costs incurred by these other companies would not be reflected in Tata Tea's unconsolidated financial statements. Therefore, the Department finds that (1) the fact that Tata Tea has affiliated harvesters is irrelevant for our analysis, and (2) Tata Tea is a non-integrated tea producer.

Regarding countervailable subsidies, when the Department has a reason to believe or suspect that the company producing comparable merchandise may have received subsidies which the Department has found to be countervailable, it may consider that the financial ratios derived from that company's financial statements are less representative of the financial experience of the relevant industry than the ratios derived from financial statements that do not contain evidence of subsidization.<sup>193</sup> Consistent with recent NME administrative reviews, the Department evaluated whether a company's financial statements show direct evidence (*i.e.*, a specific line item) that the company received a subsidy under a countervailable program.<sup>194</sup>

In evaluating Tata Tea's unconsolidated financial statements, the Department noted instances in which the company may have received export incentive or other general subsidies.<sup>195</sup> However, there is no indication that these subsidies were received pursuant to a specific program that the Department has determined to be countervailable. Xinboda has placed loan documents on the record to demonstrate that Tata Tea has received subsidies. However, the Department has found no evidence of these loans in the financial statements. Additionally, it is the Department's practice to rely on information in financial statements on an "as is" basis when calculating surrogate financial ratios.<sup>196</sup> Therefore, the Department finds that there is no basis upon which to disregard Tata Tea's financial statements due to potential subsidies.

Finally, Xinboda has noted that the Department declined to use Tata Tea's financial statements in the 2002/2003 administrative review of this case.<sup>197</sup> As an initial matter, the decision to not use Tata Tea's statements in a review from eight years ago does not preclude the Department from considering them in the current case. We note that in Garlic 9, the Department did find tea producers to provide an appropriate surrogate financial ratios, and used other tea producers' statements to calculate surrogate financial ratios. In the instant review, Tata Tea is the only tea producer on the record of this review that is suitable.<sup>198</sup>

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<sup>193</sup> See Omnibus Trade and Competitiveness Act of 1988, H.R. Rep. No. 576, 100th Cong., 2nd Sess., at 590-91 (1988) at 590 (directing the Department to "avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices").

<sup>194</sup> See, *e.g.*, KASR at Comment 2.

<sup>195</sup> See, *e.g.*, Tata Tea's 2010/2011 Financial Statements at 82.

<sup>196</sup> See, *e.g.*, Certain Frozen Warmwater Shrimp From the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews, 72 FR 52049 (September 12, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

<sup>197</sup> See Xinboda Case Brief at 78; see also Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 34082 (June 13, 2005) (Garlic 9) and accompanying Issues and Decision Memorandum (Garlic 9 IDM) at Comment 5.

<sup>198</sup> The Department notes that there are financial statements for two tea companies, Tata Tea and Limtex Tea Limited (Limtex). As explained in the Preliminary Results, Limtex's statements indicate that the company received subsidies under countervailable programs and, therefore, the Department is not considering Limtex's statements for a potential surrogate financial statement.

In Garlic 9, the Department also confirmed that “it is our practice to use financial data when available, from a company with a comparable production process rather than data based on production and processing of a product that is more highly processed or preserved prior to sale.”<sup>199</sup> As detailed above, and in the Surrogate Value Memorandum, the merchandise produced by Garlico is more highly processed than fresh garlic, bulk tea or tea packets.<sup>200</sup> Thus, while the processing of bulk tea into packets might represent value added in the production chain, it is significantly more comparable to fresh garlic than garlic powder, dehydrated potatoes or machineries. Additionally, in Garlic 9, the Department’s concerns regarding energy consumption factored into the decision to not use Tata Tea.<sup>201</sup> However, energy consumption details provided in Tata Tea’s 2010/2011 statements alleviate these concerns.<sup>202</sup> To produce “tea,” Tata Tea consumed 0.15 kilowatt hours (kWh) per kg. of electricity, where as to produce “instant tea,” it consumed 2.63 kWh per kg. of electricity.<sup>203</sup> The unconsolidated portion of its financial statements indicates that Tata Tea produced predominately “tea.”<sup>204</sup> Upon review of the Xinboda’s and Golden Bird’s FOP databases, the Department finds 0.15 kWh per kg. is comparable to the per kilogram energy usage reported by the respondents. Therefore, for purposes of this review, the Department finds that Tata Tea’s unconsolidated financial statements are more appropriate than Garlico’s financial statements.

In addition to their arguments to use Garlico’s financial statements, the respondents have also contended that, should the Department decide to include any additional financial statements to calculate the surrogate financial ratios, it should use LT Foods and REI’s financial statements instead of Tata Tea’s. After a review of the LT Foods and REI financial statements, the Department continues to find that Tata Tea’s unconsolidated financial statements continue to provide the most accurate surrogate financial ratios for this review. Using the same evaluation discussed above, , the Department finds that neither of these companies provides a more accurate or equivalent basis for calculating financial ratios. As discussed above, the Department is seeking a company that has similar production experiences to a company with peeled garlic production capabilities. As such, we find that Tata Tea’s financial statements provide the best reflection on record of the respondents’ experiences in producing peeled and whole garlic.

First, the Department finds that LT Foods’ financial statements indicate that the company received subsidies under a program determined by the Department to be countervailable. Specifically, the Department has previously found the Export Promotion Capital Goods Scheme program, listed in LT Foods’ financial statements,<sup>205</sup> a countervailable benefit from the GOI.<sup>206</sup> REI’s financial statements include a line item for receivables under the Duty Entitlement Pass

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<sup>199</sup> See Garlic 9 and accompanying Issues and Decision Memorandum at Comment 5.

<sup>200</sup> See Surrogate Value Memorandum.

<sup>201</sup> Id.

<sup>202</sup> See Tata Tea’s 2010/2011 Financial Statements at 36.

<sup>203</sup> Id.

<sup>204</sup> Id. at 86.

<sup>205</sup> See Golden Bird July 29, 2011 Surrogate Value Submission at Exhibit 15 “LT Foods Ltd. Annual Report 2009-2010” (pages 50, 71).

<sup>206</sup> See, e.g., Commodity Matchbooks From India: Final Affirmative Countervailing Duty Determination, 74 FR 54547 (October 22, 2009) and accompanying Issues and Decision Memorandum at 4.

Book Scheme (DEPB) and other value added tax and excise tax programs.<sup>207</sup> The Department has found the DEPB program, also referred to as DEPS, countervailable.<sup>208</sup> Because REI's financial statements each show receipt of subsidies under a program that the Department has previously determined to be countervailable, REI's financial statements cannot be used to calculate the financial ratios.

Finally, similar to Garlico, REI's and LT Foods' financial statements are slightly less contemporaneous to the POR than Tata Tea. Specifically, Tata Tea's financial statements cover April 1, 2010 through March 31, 2011, seven months of the POR, while REI and LT Food's financial statements only cover five months of the POR, April 1, 2009 to March 31, 2010.

As such, based on the rice companies' experience being less comparable, the statements being less contemporaneous, and containing countervailable subsidies, the Department finds that including either REI's and/or LT Foods' financial statements in addition to, or instead of, Tata Tea's financial statements would not provide more accurate financial ratios. Thus, for the reasons discussed above, Tata Tea's unconsolidated financial statements alone provide the best surrogate company for purposes of these final results.

## **Comment 9: Adjustments to the Financial Ratios**

### Xinboda's Arguments

- Should the Department continue to use Tata Tea's financial statements, it must be make the following adjustments to its SV financial ratio calculations:
  - "Cultivation, Plucking, Manufacturing and Contract Packing Expenses" should be allocated to direct labor and not factory overhead.
  - "Consumption of Packing Materials" should be allocated to raw materials, direct labor and energy (MLE) and not excluded.
  - All costs normally deducted in calculating NV and U.S. price (i.e., movement expenses, commissions, brokerage, and discounts) should be excluded and not considered part of selling, general and administrative expenses (SG&A).
  - Amortization of both goodwill and non-compete fees should be excluded.
  - The Department should allocate any revenues earned from a surrogate company's general operations as an offset to SG&A; this would include items such as miscellaneous receipts and liability write-offs. Therefore, "Rent Received" and "Liabilities no longer required written back" should be shifted from excluded to SG&A as offsets to SG&A.
  - Profit ratio should be based upon "Profit before Exceptional Items" rather than the "Profit before Taxation."

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<sup>207</sup> See Golden Bird July 29, 2011 Surrogate Value Submission at Exhibit 14-A "REI Agro Limited Annual Report 2009-2010" (page 33).

<sup>208</sup> See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review, 73 FR 7708 (February 11, 2008) and accompanying Issues and Decision Memorandum at 12.

### Petitioners' Rebuttal Arguments

- The majority of “Cultivation, Plucking, Manufacturing and Contract Packing Expenses” is related to manufacturing expenses, and thus should be considered overhead.
- In accordance with its well established practice, the Department should: (1) not treat any portion of packing costs as direct materials, or (2) include all selling expenses in SG&A.
- The Department should not make any adjustments to the profit ratio.

### Department's Position

After analyzing the comments and reviewing the calculations of the financial ratios in the Preliminary Results, the Department has made the following adjustments to the financial ratios based on the comments in these briefs. Specifically, the Department will: (1) categorize “Non-Compete Fees” under “SG&A and Interest” and (2) include “Rent Received” as an offset to “SG&A and Interest.” Consistent with Department practice, we will not adjust our profit calculation.<sup>209</sup>

Regarding Xinboda's argument that “Cultivation, Plucking, Manufacturing and Contract Packing Expenses” should be allocated to “Direct Labor” and not “Manufacturing Overhead,” the Department finds this line item was properly classified as “Manufacturing Overhead” in the Preliminary Results. Based on the fact that the Tata Tea financial statements break out direct costs, (i.e., raw materials, labor/salaries, and energy costs), the Department finds these “manufacturing”, “cultivation” and “plucking” expenses to be overhead costs. Regarding the “Contract Packing” expenses, the Department's practice is to consider subcontracting or outside services as overhead if energy and labor costs are separately listed in the financial statements.<sup>210</sup> As explained by Xinboda, these contract packing expenses listed are simply outside contracting for the manufacturing of the finished product.<sup>211</sup> As explained above, energy and labor costs are identified separately in Tata Tea's financial statements, thus, the “Cultivation, Plucking, Manufacturing and Contract Packing Expenses” were correctly categorized as “Manufacturing Overhead” in the Preliminary Results.

The Department also disagrees with Xinboda's argument that the “Consumption of Packing Materials” should be allocated to MLE. Xinboda argues that these packing materials are not indirect materials used in packaging tea, but are instead tea bags and packets that represent direct materials to the finished product.<sup>212</sup> However, there is no information on the record that indicates that these packing costs are expenses related to tea bags or packets. Therefore, consistent with the Department's practice, packing materials will continue to be fall under the “excluded” category for purposes of these final results. We also agree that “Non-Compete Fees” should not have been categorized as “Manufacturing Overhead.” These fees are related to selling expenses, and thus the Department is including these fees under “SG&A and Interest.”

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<sup>209</sup> See e.g., Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 73 FR 76336 (December 16, 2008).

<sup>210</sup> See, e.g., Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 41374 (August 17, 2009).

<sup>211</sup> See, e.g., Xinboda Case Brief at 91.

<sup>212</sup> Id. at 92.

Additionally, we find that “Commissions on Sales” are “Brokerage and Discount” selling expenses, and thus were properly classified under “SG&A and Interest” in the Preliminary Results.<sup>213</sup> We will continue to exclude “Liabilities no longer required written back” as it is unclear whether they are related to the current year or to liabilities that occurred in prior years. As such the related expenses may or may not be included in the expenses shown in the income statement. Because there is no clarifying record evidence, we will continue to exclude this item from the calculation. The Department does agree that the revenue from “Rent Received” should be included as an off-set to “SG&A and Interest.”

## **Comment 10: Whether the Department Should Apply Zeroing for the Final Results**

### Farmlady’s Arguments

- The Department must calculate the margins for Golden Bird and Xinboda without zeroing their sales with negative margins.
- The Department’s decision to change its practice of zeroing margins in administrative reviews effective for preliminary results issued after April 16, 2012, is arbitrary and denies the benefit of the change to companies with open cases.

### Xinboda’s Arguments

- The CAFC has rejected the Department's policy of zeroing negative margins in administrative reviews while not zeroing negative margins in investigations.<sup>214</sup>
- Xinboda disagrees with the CIT ruling in Dongbu II, which allows zeroing in administrative reviews. However, this finding is not a “final” court decision.<sup>215</sup> Additionally, the ruling in this case was for a market economy (ME). The rationale for this ruling is not applicable to NME cases, as the Department’s NME practice and procedures (which uses single average costs during the review period) is significantly different from its ME practice (which uses monthly average costs during the review period).

### Golden Bird’s Rebuttal Arguments

- Zeroing is not consistent with the United States’ obligations in the World Trade Organization (WTO).

### Petitioners’ Rebuttal Arguments

- The Department should continue applying zeroing in the final results of this review in accordance with the Department’s February 14, 2012 notice.<sup>216</sup>

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<sup>213</sup> The Department notes that Xinboda has argued that amortization of goodwill should be excluded from the financial ratio calculation. However, this expense is not discussed in the unconsolidated portion of Tata Tea’s financial statements, and thus are not reflected in these financial ratio calculations.

<sup>214</sup> See Dongbu Steel Co., Ltd. v. United States, 635 F.3d 1263 (Fed. Cir. 2011).

<sup>215</sup> See Union Steel and Dongbu Steel Co., Ltd. v. United States, Slip Op. 12-24 (CIT 2012) (Dongbu II).

<sup>216</sup> See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification, 77 FR 8101 (February 14, 2012) (Final Modification for Reviews).

### Department's Position

We have not changed our calculation of the weighted-average dumping margin, as suggested by the respondents, in these final results. Section 771(35)(A) of Act, defines “dumping margin” as the “amount by which the normal value exceeds the export price or constructed export price of the subject merchandise.” The definition of “dumping margin” calls for a comparison of NV and export price (EP) or constructed export price (CEP). Before making the comparison called for, it is necessary to determine how to make the comparison.

Section 777A(d)(1) of the Act and 19 CFR 351.414 provide the methods by which NV may be compared to EP (or CEP). Specifically, the statute and regulations provide for three comparison methods: average-to-average, transaction-to-transaction, and average-to-transaction. These comparison methods are distinct from each other, and each produces different results. When using transaction-to-transaction or average-to-transaction comparisons, a comparison is made for each export transaction to the United States. When using average-to-average comparisons, a comparison is made for each group of comparable export transactions for which the EPs (or CEPs) have been averaged together (i.e., averaging group).

Section 771(35)(B) of the Act defines weighted-average dumping margin as “the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer.” The definition of “weighted-average dumping margin” calls for two aggregations which are divided to obtain a percentage. The numerator aggregates the results of the comparisons. The denominator aggregates the value of all export transactions for which a comparison was made.

The issue of “zeroing” versus “offsetting” involves how certain results of comparisons are treated in the aggregation of the numerator for the “weighted-average dumping margin” and relates back to the ambiguity in the word “exceeds” as used in the definition of “dumping margin” in section 771(35)(A) of the Act. Application of “zeroing” treats comparison results where NV is less than EP or CEP as indicating an absence of dumping, and no amount (zero) is included in the aggregation of the numerator for the “weighted average dumping margin.” Application of “offsetting” treats such comparison results as an offset that may reduce the amount of dumping found in connection with other comparisons, where a negative amount may be included in the aggregation of the numerator of the “weighted-average dumping margin” to the extent that other comparisons result in the inclusion of dumping margins as positive amounts.

In light of the comparison methods provided for under the statute and regulations, and for the reasons set forth in detail below, we find that the offsetting method is appropriate when aggregating the results of average-to-average comparisons, and is not similarly appropriate when aggregating the results of average-to-transaction comparisons, such as were applied in this administrative review. The Department interprets the application of average-to-average comparisons to contemplate a dumping analysis that examines the pricing behavior on average of an exporter or producer with respect to the subject merchandise, whereas under the average-to-transaction comparison methodology we undertake a dumping analysis that examines the pricing behavior of an exporter or producer with respect to individual export transactions. The offsetting approach described in the average-to-average comparison methodology allows for an overall

examination of pricing behavior on average. Our interpretation of section 771(35) of the Act to permit zeroing in average-to-transaction comparisons, as in this administrative review, and to permit offsetting in average-to-average comparisons reasonably accounts for differences inherent in the distinct comparison methodologies.

Whether “zeroing” or “offsetting” is applied, it is important to note that the weighted-average dumping margin will reflect the value of all export transactions, dumped and non-dumped, examined during the POR; the value of such sales is included in the aggregation of the denominator of the weighted-average dumping margin. Thus, a greater amount of non-dumped transactions results in a lower weighted-average dumping margin under either methodology.

The difference between “zeroing” and “offsetting” reflects the ambiguity the CAFC has found in the word “exceeds” as used in section 771(35)(A) of the Act.<sup>217</sup> The courts repeatedly have held that the statute does not speak directly to the issue of zeroing versus offsetting.<sup>218</sup> For decades the Department interpreted the statute to apply zeroing in the calculation of the weighted-average dumping margin, regardless of the comparison method used. In view of the statutory ambiguity, on multiple occasions, both the CAFC and other courts squarely addressed the reasonableness of the Department’s zeroing methodology and unequivocally held that the Department reasonably interpreted the relevant statutory provision as permitting zeroing.<sup>219</sup> In so doing, the courts relied upon the rationale offered by the Department for the continued use of zeroing, *i.e.*, to address the potential for foreign companies to undermine the antidumping laws by masking dumped sales with higher priced sales: “Commerce has interpreted the statute in such a way as to prevent a foreign producer from masking its dumping with more profitable sales. Commerce’s interpretation is reasonable and is in accordance with law.”<sup>220</sup> The CAFC explained in Timken that denial of offsets is a “reasonable statutory interpretation given that it legitimately combats the problem of masked dumping, wherein certain profitable sales serve to mask sales at less than fair value.”<sup>221</sup> As reflected in that opinion, the issue of so-called masked dumping was part of the policy reason for interpreting the statute in the manner applied by the Department. No U.S. court has required the Department to demonstrate “masked dumping”

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<sup>217</sup> See Timken Co. v. United States, 354 F.3d 1334, 1341-45 (Fed. Cir. 2004) (Timken).

<sup>218</sup> See PAM, S.p.A. v. United States, 265 F. Supp. 2d 1362, 1371 (CIT 2003) (PAM) (“{The} gap or ambiguity in the statute requires the application of the Chevron step-two analysis and compels this court to inquire whether Commerce’s methodology of zeroing in calculating dumping margins is a reasonable interpretation of the statute.”); Bowe Passat Reinigungs-Und Waschereitechnik GmbH v. United States, 926 F. Supp. 1138, 1150 (CIT 1996) (Bowe Passat) (“The statute is silent on the question of zeroing negative margins.”); Serampore Indus. Pvt. Ltd. v. U.S. Dep’t of Commerce, 675 F. Supp. 1354, 1360 (CIT 1987) (Serampore) (“A plain reading of the statute discloses no provision for Commerce to offset sales made at {less than fair value} with sales made at fair value. . . . Commerce may treat sales to the United States market made at or above prices charged in the exporter’s home market as having a zero percent dumping margin.”).

<sup>219</sup> See, e.g., Koyo Seiko Co. v. United States, 551 F.3d 1286, 1290-91 (Fed. Cir. 2008) (“Koyo 2008”); NSK Ltd. v. United States, 510 F.3d 1375, 1379-80 (Fed. Cir. 2007) (NSK); Corus Staal BV v. United States, 502 F.3d 1370, 1375 (Fed. Cir. 2007) (Corus II); Corus Staal BV v. Department of Commerce, 395 F.3d 1343, 1347 (Fed. Cir. 2005) (Corus I); Timken, 354 F.3d at 1341-45; PAM, 265 F. Supp. 2d at 1370 (“Commerce’s zeroing methodology in its calculation of dumping margins is grounded in long-standing practice.”); Bowe Passat, 926 F. Supp. at 1149-50; Serampore, 675 F. Supp. at 1360-61.

<sup>220</sup> See Serampore, 675 F. Supp. at 1361 (citing Certain Welded Carbon Steel Standard Pipe and Tube From India: Final Determination of Sales at Less Than Fair Value, 51 FR 9089, 9092 (March 17, 1986)); see also Timken, 354 F.3d at 1343; PAM, 265 F. Supp. 2d at 1371.

<sup>221</sup> See Timken, 354 F.3d at 1343.

before it is entitled to invoke this interpretation of the statute and deny offsets to dumped sales.<sup>222</sup>

In 2005, a panel of the WTO Dispute Settlement Body found that the United States did not act consistently with its obligations under Article 2.4.2 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (GATT) 1994 when it employed the zeroing methodology in average-to-average comparisons in certain challenged antidumping duty investigations.<sup>223</sup> The initial WTO Dispute Settlement Body Panel Report was limited to the Department's use of zeroing in average-to-average comparisons in antidumping duty investigations.<sup>224</sup> The Executive Branch determined to implement this report pursuant to the authority provided in Section 123 of the Uruguay Round Agreements Act (URAA) (19 U.S.C. § 3533(f), (g)) (Section 123).<sup>225</sup> Notably, with respect to the use of zeroing, the Panel found that the United States acted inconsistently with its WTO obligations only in the context of average-to-average comparisons in antidumping duty investigations. The Panel did not find fault with the use of zeroing by the United States in any other context. In fact, the Panel rejected the European Communities' arguments that the use of zeroing in administrative reviews did not comport with the WTO Agreements.<sup>226</sup>

Without an affirmative inconsistency finding by the Panel, the Department did not propose to alter its zeroing practice in other contexts, such as administrative reviews. As the CAFC recently held, the Department reasonably may decline, when implementing an adverse WTO report, to take any action beyond that necessary for compliance.<sup>227</sup> Moreover, in Corus I, the CAFC acknowledged the difference between antidumping duty investigations and administrative reviews, and held that section 771(35) of the Act was just as ambiguous with respect to both proceedings, such that the Department was permitted, but not required, to use zeroing in antidumping duty investigations.<sup>228</sup> In light of the adverse WTO Dispute Settlement Body finding and the ambiguity that the CAFC found inherent in the statutory text, the Department abandoned its prior litigation position – that no difference between antidumping duty investigations and administrative reviews exists for purposes of using zeroing in antidumping proceedings – and departed from its longstanding and consistent practice by ceasing the use of zeroing. The Department began to apply offsetting in the limited context of average-to-average comparisons in antidumping duty investigations.<sup>229</sup> With this modification, the Department's interpretation of the statute with respect to non-dumped comparisons was changed within the limited context of investigations using average-to-average comparisons. Adoption of the modification pursuant to the procedure set forth in section 123(g) of the URAA was specifically

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<sup>222</sup> See, e.g., Timken, 354 F.3d at 1343; Corus I, 395 F.3d at 1343; Corus II, 502 F.3d at 1370, 1375; and NSK, 510 F.3d at 1375.

<sup>223</sup> See Panel Report, United States – Laws, Regulations and Methodology for Calculating Dumping Margins (Zeroing), WT/DS294/R (October 31, 2005) (EC-Zeroing Panel).

<sup>224</sup> See EC-Zeroing Panel.

<sup>225</sup> See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR 77722 (December 27, 2006); and Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Change in Effective Date of Final Modification, 72 FR 3783 (June 26, 2007) (collectively, Final Modification for Investigations).

<sup>226</sup> See EC-Zeroing Panel at 7.284, 7.291.

<sup>227</sup> See Thyssenkrupp Acciai Speciali Terni S.p.A. v. United States, 603 F.3d 928, 934 (Fed. Cir. 2010).

<sup>228</sup> See Corus I, 395 F.3d at 1347.

<sup>229</sup> See Final Modification for Investigations.

limited to address adverse WTO findings made in the context of antidumping investigations using average-to-average comparisons. The Department did not, at that time, change its practice of zeroing in other types of comparisons, including average-to-transaction comparisons in administrative reviews.<sup>230</sup>

The CAFC subsequently upheld the Department's decision to cease zeroing in average-to-average comparisons in antidumping duty investigations while recognizing that the Department limited its change in practice to certain investigations and continued to use zeroing when making average-to-transaction comparisons in administrative reviews.<sup>231</sup> In upholding the Department's decision to cease zeroing in average-to-average comparisons in antidumping duty investigations, the CAFC accepted that the Department likely would have different zeroing practices between average-to-average and other types of comparisons in antidumping duty investigations.<sup>232</sup> The CAFC's reasoning in upholding the Department's decision relied, in part, on differences between various types of comparisons in antidumping duty investigations and the Department's limited decision to cease zeroing only with respect to one comparison type.<sup>233</sup> The CAFC acknowledged that section 777A(d) of the Act permits different types of comparisons in antidumping duty investigations, allowing the Department to make average-to-transaction comparisons where certain patterns of significant price differences exist.<sup>234</sup> The CAFC also expressly recognized that the Department intended to continue to address targeted or masked dumping through continuing its use of average-to-transaction comparisons and zeroing.<sup>235</sup> In summing up its understanding of the relationship between zeroing and the various comparison methodologies that the Department may use in antidumping duty investigations, the CAFC acceded to the possibility of disparate, yet equally reasonable interpretations of section 771(35) of the Act, stating that “[b]y enacting legislation that specifically addresses such situations, Congress may just as likely have been signaling to Commerce that it need not continue its zeroing methodology in situations where such significant price differences among the export prices do not exist.”<sup>236</sup>

We disagree with the respondents that the CAFC's decisions in Dongbu and JTEKT require the Department to change its methodology in this administrative review. These holdings were limited to finding that the Department had not adequately explained the different interpretations of section 771(35) of the Act in the context of investigations versus administrative reviews, but the CAFC did not hold that these differing interpretations were contrary to law. Importantly, the

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<sup>230</sup> Id. 71 FR at 77724. On February 14, 2012, in response to several WTO dispute settlement reports, the Department adopted a revised methodology which allows for offsets when making average-to-average comparisons in reviews. See Final Modification for Reviews. The Final Modification for Reviews makes clear that the revised methodology will apply to antidumping duty administrative reviews where the preliminary results are issued after April 16, 2012. Because the preliminary results in this administrative review were completed prior to April 16, 2012, any change in practice with respect to the treatment of non-dumped sales pursuant to the Final Modification for Reviews does not apply here.

<sup>231</sup> See United States Steel Corp. v. United States, 621 F.3d. 1351, 1355 n.2, 1362-63 (Fed. Cir. 2010) (U.S. Steel).

<sup>232</sup> Id. 621 F.3d. at 1363 (stating that the Department indicated an intention to use zeroing in average-to-transaction comparisons in investigations to address concerns about masked dumping).

<sup>233</sup> Id. at 1361-63.

<sup>234</sup> Id. at 1362 (quoting sections 777A(d)(1)(A) and (B) of the Act, which enumerate various comparison methodologies that the Department may use in investigations); see also section 777A(d)(1)(B) of the Act.

<sup>235</sup> See U.S. Steel, 621 F.3d at 1363.

<sup>236</sup> Id.

panels in Dongbu and JTEKT did not overturn prior CAFC decisions affirming zeroing in administrative reviews, including SKF, in which the CAFC affirmed zeroing in administrative reviews notwithstanding the Department’s determination to no longer use zeroing in certain investigations.<sup>237</sup> Unlike the determinations examined in Dongbu and JTEKT, the Department, in these final results, provides additional explanation for its changed interpretation of the statute subsequent to the Final Modification for Investigations – whereby we interpret section 771(35) of the Act differently for certain investigations (when using average-to-average comparisons) and administrative reviews. For all these reasons, we find that our determination is consistent with the holdings in Dongbu, JTEKT, U.S. Steel, and SKF.

The Department’s interpretation of section 771(35) of the Act reasonably resolves the ambiguity inherent in the statutory text for multiple reasons. First, outside of the context of average-to-average comparisons,<sup>238</sup> the Department has maintained a long-standing, judicially-affirmed interpretation of section 771(35) of the Act in which the Department does not consider a sale to the United States as dumped if NV does not exceed EP. Pursuant to this interpretation, the Department treats such a sale as having a dumping margin of zero, which reflects that no dumping has occurred, when calculating the aggregate weighted-average dumping margin. Second, adoption of an offsetting methodology in connection with average-to-average comparisons was not an arbitrary departure from established practice because the Executive Branch adopted and implemented the approach in response to a specific international obligation pursuant to the procedures established by the URAA for such changes in practice with full notice, comment, consultations with the Legislative Branch, and explanation. Third, the Department’s interpretation reasonably resolves the ambiguity in section 771(35) of the Act in a way that accounts for the inherent differences between the result of an average-to-average comparison and the result of an average-to-transaction comparison.

The Department’s Final Modification for Investigations to implement the WTO Panel’s limited finding does not disturb the reasoning offered by the Department and affirmed by the CAFC in several prior, precedential opinions upholding the use of zeroing in average-to-transaction comparisons in administrative reviews as a reasonable interpretation of section 771(35) of the Act.<sup>239</sup> In the Final Modification for Investigations, the Department adopted a possible construction of an ambiguous statutory provision, consistent with the Charming Betsy doctrine, to comply with certain adverse WTO dispute settlement findings.<sup>240</sup> Even where the Department maintains a separate interpretation of the statute to permit the use of zeroing in certain dumping margin calculations, the Charming Betsy doctrine bolsters the ability of the Department to apply

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<sup>237</sup> See SKF v. United States, 630 F.3d 1365 (Fed. Cir. 2011) (SKF).

<sup>238</sup> The Final Modification for Reviews adopts this comparison method with offsetting as the default method for administrative reviews, however, as explained at footnote 18, this modification is not applicable to these final results.

<sup>239</sup> See, e.g., SKF USA, Inc. v. United States, 537 F.3d 1373, 1382 (Fed. Cir. 2008); NSK, 510 F.3d at 1379-1380; Corus II, 502 F.3d at 1372-1375; Timken, 354 F.3d at 1343.

<sup>240</sup> According to Murray v. Schooner Charming Betsy, 6 U.S. 64, 118 (1804), “an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains, and consequently can never be construed to violate neutral rights, or to affect neutral commerce, further than is warranted by the law of nations as understood in this country.” The principle emanating from the quoted passage, known as the Charming Betsy doctrine, supports the reasonableness of the Department’s interpretation of the statute in the limited context of average-to-average comparisons in antidumping duty investigations because the Department’s interpretation of the domestic law accords with international obligations as understood in this country.

an alternative interpretation of the statute in the context of average-to-average comparisons so that the Executive Branch may determine whether and how to comply with international obligations of the United States. Neither Section 123 nor the Charming Betsy doctrine require the Department to modify its interpretation of section 771(35) of the Act for all scenarios when a more limited modification will address the adverse WTO finding that the Executive Branch has determined to implement. Furthermore, the wisdom of the Department's legitimate policy choices in this case – *i.e.*, to abandon zeroing only with respect to average-to-average comparisons – is not subject to judicial review.<sup>241</sup> These reasons alone sufficiently justify and explain why the Department reasonably interprets section 771(35) of the Act differently in average-to-average comparisons relative to all other contexts.

Moreover, the Department's interpretation reasonably accounts for inherent differences between the results of distinct comparison methodologies. We interpret section 771(35) of the Act depending upon the type of comparison methodology applied in the particular proceeding. This interpretation reasonably accounts for the inherent differences between the result of an average-to-average comparison and the result of an average-to-transaction comparison.

The Department may reasonably interpret section 771(35) of the Act differently in the context of the average-to-average comparisons to permit negative comparison results to offset or reduce positive comparison results when calculating “aggregate dumping margins” within the meaning of section 771(35)(B) of the Act. When using an average-to-average comparison methodology the Department usually divides the export transactions into groups, by model and level of trade (*i.e.*, averaging groups), and compares an average EP or CEP of transactions within one averaging group to an average NV for the comparable merchandise of the foreign like product.<sup>242</sup> In calculating the average EP or CEP, the Department averages all prices, both high and low, for each averaging group. The Department then compares the average EP or CEP for the averaging group with the average NV for the comparable merchandise. This comparison yields an average result for the particular averaging group because the high and low prices within the group have been averaged prior to the comparison. Importantly, under this comparison methodology, the Department does not calculate the extent to which an exporter or producer dumped a particular sale into the United States because the Department does not examine dumping on the basis of individual U.S. prices, but rather performs its analysis “on average” for the averaging group within which higher prices and lower prices offset each other. The Department then aggregates the comparison results from each of the averaging groups to determine the aggregate weighted-average dumping margin for a specific producer or exporter. At this aggregation stage, negative, averaging-group comparison results offset positive, averaging-group comparison results. This approach maintains consistency with the Department's average-to-average comparison methodology, which permits EPs above NV to offset EPs below NV within each individual averaging group. Thus, by permitting offsets in the aggregation stage, the Department determines an “on average” aggregate amount of dumping for the numerator of the weighted-average dumping margin ratio consistent with the manner in which the Department determined the comparison results being aggregated.

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<sup>241</sup> See Suramerica de Aleaciones Laminadas, C.A. v. United States, 966 F.2d 660, 665 (Fed. Cir. 1992).

<sup>242</sup> See, *e.g.*, section 777A(d)(1)(A)(i) of the Act.

In contrast, when applying an average-to-transaction comparison methodology, as the Department does in this administrative review, the Department determines dumping on the basis of individual U.S. sales prices.<sup>243</sup> Under the average-to-transaction comparison methodology, the Department compares the EP or CEP for a particular U.S. transaction with the average NV for the comparable merchandise of the foreign like product. This comparison methodology yields results specific to the selected individual export transactions. The result of such a comparison evinces the amount, if any, by which the exporter or producer sold the merchandise at an EP or CEP less than its NV. The Department then aggregates the results of these comparisons – *i.e.*, the amount of dumping found for each individual sale – to calculate the weighted-average dumping margin for the POR. To the extent the average NV does not exceed the individual EP or CEP of a particular U.S. sale, the Department does not calculate a dumping margin for that sale or include an amount of dumping for that sale in its aggregation of transaction-specific dumping margins.<sup>244</sup> Thus, when the Department focuses on transaction-specific comparisons, as it did in this administrative review, the Department reasonably interprets the word “exceeds” in section 771(35)(A) of the Act as including only those comparisons that yield positive comparison results. Consequently, in transaction-specific comparisons, the Department reasonably does not permit negative comparison results to offset or reduce other positive comparison results when determining the “aggregate dumping margin” within the meaning of section 771(35)(B) of the Act.

Put simply, the Department interprets the application of average-to-average comparisons to contemplate a dumping analysis that examines the pricing behavior, on average, of an exporter or producer with respect to the subject merchandise, whereas under the average-to-transaction comparison methodology the Department continues to undertake a dumping analysis that examines the pricing behavior of an exporter or producer with respect to individual export transactions. The offsetting approach described in the average-to-average comparison methodology allows for a reasonable examination of pricing behavior, on average. The average-to-average comparison method inherently permits non-dumped prices to offset dumped prices before the comparison is made. This offsetting can reasonably be extended to the next stage of the calculation where average-to-average comparison results are aggregated, such that offsets are: (1) implicitly granted when calculating average export prices; and (2) explicitly granted when aggregating averaging-group comparison results. This rationale for granting offsets when using average-to-average comparisons does not extend to situations where the Department is using average-to-transaction comparisons because no offsetting is inherent in the average-to-transaction comparison methodology.

In sum, on the issue of how to treat negative comparison results in the calculation of the weighted-average dumping margin pursuant to section 771(35)(B) of the Act, for the reasons explained, the Department reasonably may accord dissimilar treatment to negative comparison results depending on whether the result in question flows from an average-to-average comparison or an average-to-transaction comparison. We note that neither the CIT nor the

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<sup>243</sup> See, e.g., section 777A(d)(2) of the Act.

<sup>244</sup> As discussed previously, the Department does account, however, for the sale in its weighted-average dumping margin calculation. The value of any non-dumped sale is included in the denominator of the weighted-average dumping margin while no dumping amount for non-dumped transactions is included in the numerator. Therefore, any non-dumped transactions results in a lower weighted-average dumping margin.

CAFC has rejected the above reasons. In fact, the CIT recently sustained the Department's explanation for using zeroing in administrative reviews while not using zeroing in certain types of investigations.<sup>245</sup> Accordingly, the Department's interpretations of section 771(35) of the Act to permit zeroing in average-to-transaction comparisons, as in the underlying administrative review, and to permit offsetting in average-to-average comparisons reasonably accounts for the differences inherent in distinct comparison methodologies.

Lastly, the Department's Final Modification for Reviews<sup>246</sup> is not applicable to the current review, because as noted in the notice the rule became effective April 16, 2012. Pursuant to section 123(g)(1) of the URAA, on December 28, 2010, the Department published a notice in the Federal Register proposing to modify its methodology for calculating weighted-average margins of dumping and antidumping duty assessment rates to provide offsets for non-dumped comparisons while using monthly average-to-average comparisons in reviews, in a manner that parallels the WTO-consistent methodology the Department currently applies in original antidumping duty investigations.<sup>247</sup> In accordance with its rule making procedures, following the comment period for parties, the Department released its Final Modification for Reviews and provided all parties with notice of the effective date through publication of the Federal Register notice. Our decision in this review does not deny the respondents the benefit of this rule, as the rule is not applicable to preliminary results issued prior to April 16, 2012 and the Preliminary Results corresponding to these final results was published on December 7, 2011.

Consistent with the Department's interpretation of the Act described above, in the event that any of the U.S. sales transactions examined in this review are found to exceed NV, the amount by which the price exceeds NV will not offset the dumping found in respect of other transactions.

### **Comment 11: Selection and Corroboration of the PRC-Wide Entity Rate**

#### Farmlady's Arguments

- The PRC-wide entity rate of \$4.71 per kilogram (kg) rate used in the Garlic 16 Partial Final<sup>248</sup> is punitive, arbitrary, capricious, and contrary to law.
- The PRC-wide entity per-unit rate relies, in part, on a 376 percent ad valorem petition rate which is roughly 20 years old. Moreover, the per-unit rate is not based on the commercial reality of companies that failed to participate in this review, because the Department has never calculated a per-unit "separate rate" as high as \$4.71/kg.
- A company's decision to not participate in a review while knowing that it would likely receive the PRC-wide entity rate at issue does not corroborate that rate. The company's decision to not participate may have nothing to do with the rate.
- Just because the PRC-wide rate at issue "was not challenged" and "no information has been presented in this review that calls into question the reliability of the information" does not justify the rate.

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<sup>245</sup> See Dongbu II.

<sup>246</sup> See Final Modification for Reviews.

<sup>247</sup> See Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings, 75 FR 81533 (December 28, 2010).

<sup>248</sup> See Garlic 16 Partial Final and accompanying Issues and Decision Memorandum.

- Repeated adoption of a rate over an extended period of time does not make it reliable or relevant to this administrative review.
- The CAFC has ruled that while the Department may act with “an eye towards deterrence,” the Department must select a rate that has a relationship to actual sales information.<sup>249</sup>
- The Department has an affirmative responsibility to select a PRC-wide entity rate which reflects “commercial reality” and then to add an appropriate amount as a deterrence factor. This rate should be based on the highest calculated rate from a recent administrative review or new shipper review.

### Department’s Position

The PRC-wide entity rate is not being applied to any party subject to these final results; rather, the PRC-wide entity rate was at issue in the Garlic 16 Partial Final. In those final results, parties subject to the PRC-wide entity rate raised largely identical arguments now made by Farmlady. We continue to find it appropriate to apply the rate of \$4.71/kg to the PRC-wide entity.

Similar to the reasons the CIT found the PRC-wide entity rate corroborated in Watanabe Group and Peer Bearing,<sup>250</sup> here the Department finds the PRC-wide entity rate to be corroborated. The Department finds this rate to be reliable and relevant, because: (1) it constitutes the highest rate from any segment of the proceeding, (2) it was applied as the PRC-wide entity rate in the immediately preceding review and has been applied as the PRC-wide entity rate in over dozen completed reviews, and (3) was corroborated in a recent review using transaction specific margins of respondents in that review.

As the Department is not applying the PRC-wide entity to parties subject to these final results, Farmlady’s arguments regarding the PRC-wide entity rate are not relevant to the issues in these final results. For a more extensive discussion of the Department’s position on the arguments raised by Farmlady, see Garlic 16 Partial Final.<sup>251</sup>

## **Comment 12: Review Request Process in Reviews of NME Countries**

### Farmlady’s Arguments

- In NME cases, the Department applies the PRC-wide rate to all imports subject to the order, unless the exporter participates in the review and receives a separate rate or is excluded from review by the petitioners withdrawing their request of that respondent.
- Allowing domestic interested parties to identify individual companies in their request for review allows them to control the administrative review process. This encourages exporters to deal directly with domestic interested parties and “enter into agreements that may otherwise be illegal.”
- This practice encourages domestic interested parties to include as many exporters as possible in each review in order to negotiate deal(s) with the exporter to be excluded from the review. In excluding certain exporters from the review, domestic interested parties

<sup>249</sup> See Ta Chen Stainless Steel Pipe, Inc. v. United States, 298 F.3d 1330, 1340 (Fed. Cir. 2002).

<sup>250</sup> See Watanabe Group v. United States, Court No. 09-00520 Slip Op. 10-139 (CIT 2010) (Watanabe Group); see also Peer Bearing Company - Cangshan v. United States, 587 F. Supp. 2d 1319 (CIT 2008) (Peer Bearing).

<sup>251</sup> See Garlic 16 Partial Final and accompanying Issues and Decision Memorandum at Comment 1.

distort the separate rate applicable to non-mandatory respondents. This runs counter to the spirit and letter of the law.

- The Department must change its procedures, by removing the ability of domestic interested parties to identify specific exporters in their review requests, so that domestic interested parties do not control the administrative review process.
- The Department must enforce its existing regulations, specifically 19 CFR 351.213(b), by requiring domestic interested parties to submit meaningful reasons why they desire a review of specific exporters.
- The Department has not explained how its single rate policy affects the implementation of 19 CFR 351.213(b). Specifically, domestic interested parties have “no reason” to name individual companies in their requests for review since “all NME exporters become respondents automatically.”
- The Department must explain “what antidumping duty assessment rates applied to imports of subject merchandise from Harmoni and the other exporters which the Department excluded from the review.”<sup>252</sup>

### Department’s Position

The Department’s initiation of this review, based on the requests received, was in accordance with the statute and our regulations. Under section 751(a) of the Act, the Department is required to conduct reviews upon request. Moreover, the Department’s regulations require that domestic interested parties (*i.e.*, Petitioners) name specific exporters or producers in their request for an administrative review. The Department’s regulations state:

Request for administrative review. (1) Each year during the anniversary month of the publication of an antidumping or countervailing duty order, a domestic interested party or an interested party described in section 771(9)(B) of the Act (foreign government) may request in writing that the Secretary conduct an administrative review under section 751(a)(1) of the Act of specified individual exporters or producers covered by an order (except for a countervailing duty order in which the investigation or prior administrative review was conducted on an aggregate basis), if the requesting person states why the person desires the Secretary to review those particular exporters or producers.<sup>253</sup>

The Department’s regulations make clear that Petitioners’ request for a review of specified individual companies in this case is precisely how the review request process is designed.<sup>254</sup> Therefore, we consider Petitioners’ review requests to be in accordance with the Department’s regulations. Furthermore, the regulations are also clear that any party (including Petitioners) requesting a review may withdraw any of its requests for review normally within 90 days from

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<sup>252</sup> See Garlic 16 Partial Final.

<sup>253</sup> See 19 CFR 351.213(b).

<sup>254</sup> See Floral Trade Council v. United States, Court No. 93-06-00372, Slip Op. 93-244 (CIT 1993) (affirming the Department’s requirement that petitioners name specific producers and exporters).

the date of publication of the initiation of review.<sup>255</sup> If no other party has requested a review of that producer/exporter, we are then obliged to rescind the review of that producer/exporter.<sup>256</sup>

Our review of the record of this review continues to show that Petitioners' request for review complied with 19 CFR 351.213(b). We note that Petitioners' request named specific exporters or producers and provided a reason for their requests for review.<sup>257</sup> Specifically, in their request, Petitioners indicated that their request was based upon their belief that the companies identified in their request for review ". . . may have produced and/or exported fresh garlic shipped to the United States during the POR and that the cash deposits or estimated antidumping duties required on any such entries understate the actual assessable antidumping duties owed."<sup>258</sup> The Department finds this type of statement to be reasonable and to meet the requirements under 19 CFR 351.213(b). There is no additional requirement of a narrative on the part of the requestor or a showing of intent to dump on the part of the party for whom review is requested or withdrawn. Petitioners have sufficiently complied with the statutory and regulatory mandate for requesting and withdrawing reviews of certain parties.

### **Comment 13: The Department's 15-day Liquidation Instructions Policy**

#### Farmlady's Arguments

- The Department's 15-day policy for issuing liquidation instructions conflicts with section 751(h) of the Act and 19 CFR 351.224 which govern ministerial error allegations and Rule 3(a)(2) of the CIT.
- The Statement of Administrative Action to Implement Article VI of the GATT (at 64) allows the Department to delay liquidation if the duty liability is subject to liquidation.
- The CIT held this policy to be contrary to law in Tianjin Machinery.<sup>259</sup>

#### Department's Position

The Department intends to continue its policy of issuing liquidation instructions 15 days after the publication of these final results. We note that nothing in the plain language of section 751(h) of the Act and 19 CFR 351.224 provides for a delay in issuing liquidation instructions. Moreover, the CIT has already considered the respondents' views that the Department's 15-day liquidation policy is unlawful. Specifically, in Mittal Steel II the CIT concluded that the Department's 15-day policy was a reasonable statutory interpretation.<sup>260</sup> After noting that the Department had developed the 15-day policy pursuant to 19 U.S.C. § 1675(a)(3) to facilitate timely liquidations,<sup>261</sup> the CIT determined that "Customs cannot liquidate promptly if Commerce does not issue the instructions in a timely manner."<sup>262</sup> The CIT also determined that the 15-day policy

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<sup>255</sup> As a result of Garlic 16 Partial Final the Department instructed U.S. Customs and Border Protection to liquidate entries of subject merchandise made during the POR for companies whose reviews were rescinded at the cash deposit or bonding rate required at the time of entry.

<sup>256</sup> See 19 CFR 351.213(d)(1).

<sup>257</sup> See Letter to the Department from Petitioners regarding "16th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – Request for Review," dated November 30, 2010.

<sup>258</sup> Id. at 2.

<sup>259</sup> See Tianjin Machinery Import & Export Corp. v. United States, Slip Op. 04-125 (CIT 2004) (Tianjin Machinery)

<sup>260</sup> See Mittal Steel Galati S.A. v. United States, 502 F. Supp. 2d 1295 (CIT 2007) (Mittal Steel II) at 1317.

<sup>261</sup> Id. 502 F. Supp. 2d at 1314.

<sup>262</sup> Id. at 1316.

advances the legislative intent behind the antidumping statutory framework to create more transparent antidumping review procedures and to further the protection of parties' rights through heightened due process "by informing affected parties of the Department's anticipated timetable for transmitting liquidation instructions to Customs" and "by encouraging affected parties to exercise their rights of judicial review in a timely manner."<sup>263</sup> Finally, the CIT noted that the Department's action in adopting the 15-day policy "was within Commerce's area of particular expertise and statutory authority."<sup>264</sup> Overall, the CIT sustained the Department's 15-day policy as reasonable because it "fill{ed} the statutory gap in a manner consistent with the statute's language and the legislative intent" and because the Department had adopted the policy "based on its own, special expertise."<sup>265</sup> In doing so, the CIT also relied upon Mukand<sup>266</sup> and upon Mittal Steel I.<sup>267</sup>

Furthermore, any other reading of the statute would render the CIT's injunctive powers superfluous, as there would be no need for injunctive relief if the Department were required to voluntarily refrain from issuing liquidation instructions pending litigation. "It is a cardinal rule of statutory construction that significance and effect shall, if possible, be accorded to every word."<sup>268</sup> Injunctive relief is available only upon a proper showing that the requested relief should be granted, thus, there is no reason for the Department to voluntarily refrain from issuing liquidation pending a party's decision to pursue judicial review and request injunctive relief. As the appellate court in Zenith stated, "without a preliminary injunction, all of the entries occurring during the review period will be liquidated immediately," in accordance with the review results.<sup>269</sup> Accordingly, the Department's interpretation of the statute to not require the agency to await a party's litigation decision before issuing liquidation instructions is reasonable.<sup>270</sup>

We recognize that other decisions by the CIT have disagreed with the ruling in Mittal Steel II that the 15-day policy is reasonable.<sup>271</sup> We respectfully disagree with those decisions. While the Department's policy at issue in the Mittal Steel I and Mittal Steel II cases and Mukand was to issue liquidation instructions within 15 days of publishing its final results, the Department modified its policy in November 2010 to indicate that it will issue liquidation instructions after 15 days from publication elapse.<sup>272</sup>

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<sup>263</sup> Id. (citation omitted).

<sup>264</sup> Id. at 1317.

<sup>265</sup> Id.

<sup>266</sup> See Mukand Int'l, Ltd. v. United States, 452 F. Supp. 2d 1329, 1334-35 (CIT 2006) (Mukand) ("Commerce's issuance of liquidation instructions within the combined 60-day period under 19 U.S.C. § 1516a(a)(2)(A) for commencement of an action in the United States Court of International Trade was not unlawful. . . .").

<sup>267</sup> See Mittal Steel Point Lisas Ltd. v. United States, 491 F. Supp. 2d 1222 (CIT 2007) (sustaining 15-day policy) (Mittal Steel I).

<sup>268</sup> See Timken, 893 F.2d at 337 (citing United States v. Lexington Mill & Elevator Co., 232 U.S. 399, 410 (1914); United States v. Measche, 348 U.S. 528, 538 (1955)).

<sup>269</sup> See Zenith Radio Corp. v. United States, 710 F.2d 806 (Fed. Cir. 1983).

<sup>270</sup> See Torrington Co. v. United States, 68 F.3d 1347, 1351 (Fed. Cir. 1995) (quoting Daewoo Elecs. Co. v. Int'l Union, 6 F.3d 1511, 1516 (Fed. Cir. 1993), cert. denied, 512 U.S. 1204 (1994)).

<sup>271</sup> See, e.g., Tianjin Machinery.

<sup>272</sup> See Announcement Concerning Issuance of Liquidation Instructions Reflecting Results of Administrative Reviews (August 9, 2010).

**RECOMMENDATION:**

Based on our analysis of the comments received, we recommend adopting all of the above positions. If accepted, we will publish these partial final results of review in the Federal Register.

AGREE \_\_\_\_\_ DISAGREE \_\_\_\_\_

\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
for Import Administration

\_\_\_\_\_  
Date