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E&C/Office VII: HES

May 13, 2014

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Results of the  
Antidumping Duty New Shipper Review of Fresh Garlic from the  
People's Republic of China: Jinxiang Merry Vegetable Co., Ltd.  
and Cangshan Qingshui Vegetable Foods Co., Ltd.

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## I. SUMMARY

In response to a request from interested parties, the Department of Commerce (“the Department”) is conducting a new shipper review (“NSR”) on Jinxiang Merry Vegetable Co., Ltd. (“Merry”) and Cangshan Qingshui Vegetable Foods Co., Ltd. (“Qingshui”) with respect to the antidumping duty (“AD”) order on fresh garlic from the People’s Republic of China (“the PRC”). The period of review (“POR”) is November 1, 2012, through April 30, 2013. The Department preliminarily determines that Merry and Qingshui are new shippers and have made sales at prices below normal value (“NV”).

If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (“CBP”) to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. We will issue final results no later than 90 days from the date of publication of this notice, pursuant to section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (“the Act”).



## II. BACKGROUND

On June 3, 2013, Qingshui and Merry each requested an NSR.<sup>1</sup> On July 5, 2013, the Department initiated this NSR for Merry and Qingshui.<sup>2</sup> Between July 18, 2013, and January 8, 2014, the Department issued its initial AD questionnaire and supplemental questionnaires to both Merry and Qingshui. Merry and Qingshui timely responded to all of the Department's questionnaires.

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.<sup>3</sup> Therefore, all deadlines in this segment of the proceeding have been extended by 16 days. As a result, the revised deadline for preliminary determination of this review is now May 13, 2014.

## III. SCOPE OF THE ORDER

The products covered by the order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay. The scope of the order does not include the following: (a) Garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed. The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings: 0703.20.0000, 0703.20.0010, 0703.20.0015, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, 0711.90.6500, 2005.90.9500, 2005.90.9700, 2005.99.9700, and of the Harmonized Tariff Schedule of the United States (HTSUS).<sup>4</sup>

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

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<sup>1</sup> See Letter from Qingshui to the Secretary of Commerce, "Fresh Garlic from the People's Republic of China- Request for New Shipper Review," May, 8, 2013 (Qingshui NSR Request) and Letter from Merry to the Secretary of Commerce, "Fresh Garlic from the People's Republic of China- Request for New Shipper Review," May 24, 2013 ("Merry NSR Request").

<sup>2</sup> See *Fresh Garlic from the People's Republic of China: Initiation of Antidumping Duty New Shipper Review; 2011-2012*, 78 FR 40428 (July 5, 2013).

<sup>3</sup> See the Department Memorandum, "Deadlines Affected by the Shutdown of the Federal Government," dated October 18, 2013.

<sup>4</sup> See *Antidumping Duty Order: Fresh Garlic From the People's Republic of China*, 59 FR 59209 (November 16, 1994).

## IV. DISCUSSION OF THE METHODOLOGY

### A. Harmonized Tariff Schedule (HTS) Number Classification

For purposes of analysis in this NSR, the Department chose to analyze Merry and Qingshui's subject merchandise transactions, as Merry and Qingshui classified them under HTSUS subheading 0703.20.0020.

### B. Bona Fide Sale Analysis

For this review, consistent with the Department's practice, the Department investigated the *bona fide* nature of the sales made by Merry and Qingshui during the POR. In evaluating whether a sale in an NSR is commercially reasonable, and therefore *bona fide*, the Department considers, *inter alia*, such factors as: (1) the timing of the sale; (2) the price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the transaction was made on an arm's-length basis.<sup>5</sup> Accordingly, the Department considers a number of factors in its *bona fide* sale analysis, "all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise."<sup>6</sup>

The Department preliminarily finds that the sales of subject merchandise made by both Merry and Qingshui were made on a *bona fide* basis. Specifically, the Department preliminarily finds that: (1) the timing of the sales by itself does not indicate that the sale might not be *bona fide*; (2) record evidence indicates that the prices and quantities of the sales are commercially reasonable and not atypical of normal business practices of fresh garlic exporters; (3) Merry and Qingshui did not incur any extraordinary expenses arising from the transactions; (4) it is unclear how much profit or loss was incurred in the resale of subject merchandise by Merry and Qingshui's unaffiliated U.S. customers for a profit; and (5) the new shipper sales were made between Merry and Qingshui and their unaffiliated U.S. customers at arm's length.<sup>7</sup> Therefore, the Department preliminarily finds that Merry and Qingshui's sales of subject merchandise to the United States are *bona fide* for the purposes of these NSRs.

### C. Non-Market Economy Country Status

In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is a nonmarket economy ("NME") country shall remain in effect until revoked by the administering

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<sup>5</sup> See, e.g., *Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246, 1250 (CIT 2005).

<sup>6</sup> See *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1342 (CIT 2005) (citing *Fresh Garlic From the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002)).

<sup>7</sup> For the complete analysis, see Memorandum from Sean Carey, Senior International Trade Compliance Analyst, Office VII, AD/CVD, "Bona Fide Nature of the Sales in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China (PRC): Cangshan Qingshui Vegetable Foods Co., Ltd.," dated concurrently with this memorandum; see also Memorandum from Sean Carey, Senior International Trade Compliance Analyst, Office VII, AD/CVD, "Bona Fide Nature of the Sales in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China (PRC): Jinxiang Merry Vegetable Co., Ltd.," dated concurrently with this memorandum.

authority.<sup>8</sup> As such, the Department continues to treat the PRC as an NME in this proceeding. Accordingly, we calculated NV using the factors of production (“FOP”) methodology in accordance with section 773(c) of the Act, which applies to NME countries.

#### D. Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assessed a single antidumping duty rate.<sup>9</sup> In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME reviews.<sup>10</sup> It is the Department’s policy to assign all exporters of subject merchandise in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.<sup>11</sup> Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* governmental control over export activities.<sup>12</sup> The Department analyzes each entity’s export independence under a test first articulated in *Sparklers* and as further developed in *Silicon Carbide*.<sup>13</sup> However, if the Department determines that a company is wholly foreign-owned or located in a market economy (“ME”), then a separate rate analysis is not necessary to determine whether it is independent from government control.<sup>14</sup>

#### E. Separate Rate Recipient

##### 1. Wholly Chinese-Owned Company

Merry and Qingshui reported that each company is a wholly Chinese-owned company that is privately owned and controlled.<sup>15</sup> According to Merry and Qingshui’s business licenses, they are each incorporated as limited liability companies.<sup>16</sup> We analyzed whether these respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

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<sup>8</sup> See section 771(18)(C)(i) of the Act.

<sup>9</sup> See Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries, available at <http://trade.gov/enforcement/policy/bull05-1.pdf>.

<sup>10</sup> See *Initiation Notice*.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> See *Final Determination of Sales at Less Than Fair Value: Sparklers From the People’s Republic of China*, 56 FR 20588 (May 6, 1991) (“*Sparklers*”); see also *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People’s Republic of China*, 59 FR 22585 (May 2, 1994) (“*Silicon Carbide*”).

<sup>14</sup> See, e.g., *Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People’s Republic of China*, 72 FR 52355, 52356 (September 13, 2007).

<sup>15</sup> See Letter from Merry to the Secretary of Commerce, “Fresh Garlic {from} the People’s Republic of China — Response to Section A of the Questionnaire,” dated August 22, 2013, (“Merry’s Section A Response”) at Exhibit 2 and Letter from Qingshui to the Secretary of Commerce, “Fresh Garlic {from} the People’s Republic of China — Response to Section A of the Questionnaire,” dated August 23, 2013, (“Qingshui’s Section A Response”) at Question 2, pp. 2-4.

<sup>16</sup> See Merry’s Section A Response and Qingshui’s Section A Response at Exhibit 2.

## 2. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses, (2) any legislative enactments decentralizing control of companies, and (3) other formal measures by the government decentralizing control of companies.<sup>17</sup> The evidence provided by Merry and Qingshui supports a preliminary finding of an absence of *de jure* government control based on the criteria outlined above.<sup>18</sup>

## 3. Absence of *De Facto* Control

Typically, the Department considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) whether the export prices ("EPs") are set by or are subject to the approval of a government agency, (2) whether the respondent has authority to negotiate and sign contracts and other agreements, (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management, and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.<sup>19</sup> The Department determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control, which would preclude the Department from assigning separate rates. The evidence provided by Merry and Qingshui supports a preliminary finding of an absence of *de facto* government control based on the criteria outlined above.<sup>20</sup>

As a result of our analysis, the Department preliminarily finds that Merry and Qingshui established that they qualify for separate rates under the criteria established by *Silicon Carbide* and *Sparklers*.

## F. Surrogate Country

### 1. Level of Economic Development

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's FOPs, valued in a surrogate ME country, or countries, considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are (a) at a level of economic development comparable to that of the NME country and (b) are significant producers of comparable merchandise. Moreover, it is the Department's practice to select an

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<sup>17</sup> See *Sparklers*, 56 FR at 20589.

<sup>18</sup> See Merry's and Qingshui's Section A Response at questions 2(b) through 2(f) and 5 (financial practices).

<sup>19</sup> See *Silicon Carbide*, 59 FR at 22587; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

<sup>20</sup> See Merry's and Qingshui's Section A Response at question 2 and supporting exhibits.

appropriate surrogate country (“SC”) based on the availability and reliability of data from the countries.<sup>21</sup>

Section 773(c)(4)(A) of the Act is silent with respect to how the Department may determine that a country is economically comparable to the NME country. As such, the Department’s long standing practice has been first to identify those countries which are at the same level of economic development as the PRC based on per capita gross national income (“GNI”) data available in the World Development Report provided by the World Bank.<sup>22</sup> We note that identifying potential surrogate countries based on GNI data has been affirmed by the U.S. Court of International Trade (“CIT”).<sup>23</sup>

Pursuant to section 773(c)(4) of the Act, the Department determined that Bulgaria, Colombia, Ecuador, Indonesia, South Africa, and Thailand are at the same level of economic development as the PRC.<sup>24</sup> The range of GNI represented by the list of potential surrogate countries ranges from \$3,420 to \$7,610.<sup>25</sup> Given that the surrogate country list is non-exhaustive, as explained in the surrogate country memorandum, interested parties identified two other potential surrogate countries: India and Romania. Romania has a higher GNI (\$8,420) than the surrogate countries on the list. The Department finds that Romania satisfies the statute’s requirement that the surrogate country be at a comparable level of economic development as the PRC. India has a lower GNI (\$1,530) than the surrogate countries on the list. The Department finds India to be at a lower and, thus, less comparable level of economic development than that represented by the six countries on the initial surrogate country candidate list, but still comparable to that of the PRC.

As explained in the Department’s Policy Bulletin 04.1, “{t}he surrogate countries on the list are not ranked.”<sup>26</sup> This lack of ranking reflects the Department’s long-standing practice that, for the purpose of surrogate country selection, the countries on the list “should be considered equivalent”<sup>27</sup> from the standpoint of their level of economic development based on GNI as compared to the PRC’s level of economic development and recognition of the fact that the concept of “level” in an economic development context necessarily implies a range GNI, not a specific GNI. This long-standing practice of providing a non-exhaustive list of countries at the same level of economic development as the NME country fulfills the statutory requirement to value FOPs using data from “one or more market economy countries that are at a level of economic development comparable to that of the nonmarket economy country...”<sup>28</sup> In this

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<sup>21</sup> See Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin No. 04.1).

<sup>22</sup> See, e.g., *Pure Magnesium from the People's Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 75 FR 80791 (December 23, 2010) and accompanying Issues and Decision Memorandum at Comment 4. These are the countries identified in the Department Letter, “2012-2013 Semi-Annual Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China: Request for Surrogate Country and Surrogate Value Comments and Information,” dated February 12, 2014 (Surrogate Country List).

<sup>23</sup> See *Fujian Lianfu Forestry Co., Ltd. v. United States*, 638 F. Supp. 2d 1325 (CIT 2009).

<sup>24</sup> See Surrogate Country List.

<sup>25</sup> *Id.*

<sup>26</sup> See Policy Bulletin No. 4.1.

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

<sup>28</sup> See section 773(c)(4) of the Act.

regard, “countries that are at a level of economic development comparable to that of the nonmarket economy country” necessarily includes countries that are at the same level of economic development as the NME country.

Because the non-exhaustive list is only a starting point for the surrogate country selection process, the Department also considers other countries that interested parties propose that meet the statutory requirements. Countries on the case record that are at the same level of economic development as the PRC are given equal consideration for the purposes of selecting a surrogate country. Countries that are not at the same level of economic development as the PRC’s, but still at a level of economic development comparable to the PRC, are selected only to the extent that data considerations outweigh the difference in levels of economic development. As noted above, GNI is the primary indicator of a country’s level of economic development.

## 2. Significant Producers of Comparable Merchandise

Where possible, the Department relied on the 2012 United Nations Food and Agriculture Organization (“FAO”) production data for fresh garlic when considering whether any of the countries in the Surrogate Country List are also significant producers of comparable merchandise. The production data placed on the record of this review<sup>29</sup> for the six countries on the Surrogate Country List indicates that domestic production levels are as follows:

<b>Economically-Comparable Countries<sup>30</sup></b>	<b>Garlic Production (MTs)</b>
South Africa	1,500
Ecuador	1,500
Bulgaria	1,651
Colombia	7,025
Indonesia	17,638
Thailand	77,000

This production data indicates that Indonesia and Thailand are significant producers of comparable merchandise. However, information on the record of this review suggests that none of these countries produce garlic similar in bulb size to the PRC (*see* “Data Considerations” section, below). Here, the value of the primary input, the garlic bulb, is primarily affected by size. Moreover, both Petitioners and respondents argued against using any of the six countries

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<sup>29</sup> *See, e.g.*, Petitioners SV Submission at page 5.

<sup>30</sup> Unless otherwise indicated, production data was based on FAO data.

on the Surrogate Country List.<sup>31</sup> The value of the primary input, the garlic bulb, is primarily affected by the size of the bulb. Accordingly, India and Romania have been put forward by Petitioners and respondents, respectively, as suitable primary surrogate countries with garlic production sufficiently comparable to Chinese garlic, usable financial statements, and SVs for all other inputs.<sup>32</sup> As both these countries produce garlic similar in size to that of the PRC, we also considered SVs from India and Romania in these preliminary results.

### 3. Data Considerations

After evaluating economic comparability and significant production of comparable merchandise, if more than one country remains, it is the Department's practice to select an appropriate SC based on the availability and reliability of data from those countries.<sup>33</sup> In this case, we looked at the availability of information regarding the most significant FOPs. As in prior proceedings of this order, raw garlic bulb is the most significant input because it accounts for the largest percentage of NV, as fresh garlic (both whole and peeled) is produced directly from the raw garlic bulb.<sup>34</sup> As such, we must consider the availability and reliability of the SVs for raw garlic bulb on the record. Accordingly, the Department determined that we must go one step further in the evaluation of the data by looking at information that would indicate which country produces garlic which is most similar to that produced in the PRC. This would include an evaluation of any information regarding the general garlic produced in the country, such as the growing conditions and physical characteristics of the varieties grown in the country.

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

A review of the information regarding garlic grown in Indonesia and Thailand indicates that the garlic produced in these countries is smaller than the large garlic bulbs produced in the PRC. Specifically, the garlic grown in Thailand appears to be less than 15 mm in diameter.<sup>35</sup> Additionally, Petitioners indicated that the average size of garlic grown in Indonesia ranges from

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<sup>31</sup> See Letter to the Department from Petitioners, "21st New Shipper Review of Fresh Garlic from the People's Republic of China - Petitioners' Comments on List of Potential Surrogate Country Selection" (February 28, 2014); see also Letter to the Department from Merry and Qingshui, "Fresh Garlic from the People's Republic of China: Surrogate Country Recommendation" (March 14, 2014). Petitioners are the Fresh Garlic Producers Association and its individual members: Christopher Ranch LLC, The Garlic Company, Valley Garlic and Vessey and Company (Petitioners).

<sup>32</sup> See Letter to the Department from Merry and Qingshui, "Fresh Garlic from the People's Republic of China: Surrogate Values for the Preliminary Results." ("Merry and Qingshui SV submission") (March 28, 2014); see also Letter to the Department from Petitioners, "21st New Shipper Review of Fresh Garlic from the People's Republic of China - Petitioners' Comments on Surrogate Values" ("Petitioners SV-1 submission") (April 9, 2014); see also letter to the Department from Petitioners, "21st New Shipper Review of Fresh Garlic from the People's Republic of China - Petitioners' Comments on Selection of a Contemporaneous Surrogate Value for Input Garlic Bulbs from an Appropriate Market Economy Country" (April 11, 2014).

<sup>33</sup> See Policy Bulletin No. 04.1.

<sup>34</sup> See, e.g., *Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 36168 (June 17, 2013).

<sup>35</sup> See Petitioners' SV-1 submission at 8 and Exhibits TH-1, TH-2, and TH-3.

very small to small, with only a limited number of medium-sized bulbs.<sup>36</sup> Petitioners indicated that Romania produces large garlic with garlic bulb diameters at or above 55 mm, similar to Chinese garlic.<sup>37</sup> Similarly, Merry and Qingshui provided information indicating that India also produces large garlic at or above 55 mm.<sup>38</sup> Thus, the Department finds Indian and Romanian garlic to be more comparable to PRC garlic than Indonesian or Thai garlic. However, no clear evidence demonstrates that either Indian or Romanian garlic is more comparable to Chinese garlic. Therefore, for purposes of these preliminary results, we evaluated which country's pricing data is the most reliable. The pricing data for the Indian garlic provided by both Merry and Qingshui are contemporaneous with the POR only for the Grade A (*i.e.*, large) garlic bulb and not the Grade Super-A (*i.e.*, very large, in excess of 60 mm) garlic bulb.<sup>39</sup> The pricing data submitted by Petitioners for Romanian garlic bulbs of all sizes is contemporaneous with the POR.<sup>40</sup> Furthermore, the Romanian pricing data is published by the Romanian National Institute of Statistics ("INNSE"), which is consistent with the prices published in the FAO data.<sup>41</sup> Because the Department is able to tie the Romanian garlic prices directly to official government sources as well as to the FAO data, whereas the Indian data cannot be tied to FAO data because the Indian prices are only regional prices, we find that Romanian pricing data provide a broader source than the Indian garlic pricing data and therefore, a more reliable surrogate value in this case. On these bases, we preliminarily select Romania as the SC for the instant review.

Since it is the Department's preference to rely on a single SC and we have usable SVs from Romania for all FOPs reported by Merry and Qingshui, we preliminarily will use SVs only from Romania. The sources of the SVs are discussed under the "Normal Value" section below and in the Surrogate Values Memorandum.<sup>42</sup>

## V. DATE OF SALE

Consistent with our regulation, Merry and Qingshui both reported the invoice date as the date of sale.<sup>43</sup> Although the Department found that Merry's invoice date is after its shipment date, we verified that the terms of sale did not change after shipment.<sup>44</sup> Therefore, consistent with the Department's practice and regulation, we selected the invoice date as the date of sale.

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<sup>36</sup> See Letter to the Department from Petitioners, "21st New Shipper Review of Fresh Garlic from the People's Republic of China – Petitioners' Comments on Surrogate Values" ("Petitioners SV-2 submission") (April 9, 2014).

<sup>37</sup> See Petitioners' SV-1 submission at 13 and Exhibits SC-1 and SC-3.

<sup>38</sup> See Merry and Qingshui's SV Submission at 1 and at Exhibit 2.

<sup>39</sup> See Merry's and Qingshui's SV submission at Exhibit 2.

<sup>40</sup> See Petitioners' SV-1 submission at SV-1.

<sup>41</sup> *Id.*, at SV-1.

<sup>42</sup> See Memorandum to the File, "Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Surrogate Values for the Preliminary Results" ("Surrogate Values Memorandum"), dated concurrently with this memorandum.

<sup>43</sup> See Merry's and Qingshui's Section A Responses at A-14; 19 CFR 351.401(i).

<sup>44</sup> See Merry's Section A Response at Exhibit 1 (*Commercial Invoice and Entry Document*); see also Merry's *Bona Fide* Analysis Memorandum.

## **VI. FAIR VALUE COMPARISONS**

To determine whether Merry and Qingshui sold fresh garlic to the United States at less than NV, the Department compared the EP to the NV, as described in the “Export Price” and “Normal Value” sections below.<sup>45</sup>

## **VII. DIFFERENTIAL PRICING ANALYSIS**

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

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

In the first stage of the differential pricing analysis, the “Cohen’s *d* test” is applied. The Cohen’s *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen’s *d* test is applied when the test and comparison groups of data each have at least two observations and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. In the instant case, we have only one reported sale for each company under review and therefore, are unable to establish usable comparison and test groups. When this is the case, no comparison is made.<sup>46</sup>

## **VIII. U.S. PRICE**

In accordance with section 772(a) of the Act, EP is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the

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<sup>45</sup> In these preliminary results, the Department applied the weighted-average dumping margin calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101 (February 14, 2012). In particular, the Department compared monthly weighted-average EPs with monthly weighted-average NVs and granted offsets for non-dumped comparisons in the calculation of the weighted average dumping margin.

<sup>46</sup> See “Administrative Review of Fresh Garlic from the People’s Republic of China: Calculation Memorandum for the Preliminary Results of Jinxiang Merry Vegetable Co., Ltd. and Cangshan Qingshui Vegetable Foods Co., Ltd.,” dated concurrently with this memorandum.

subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under section 772(c) of the Act. In accordance with section 772(a) of the Act, the Department used EP for the U.S. sales of both Merry and Qingshui because the subject merchandise was sold directly to the unaffiliated customers in the United States prior to importation and because constructed EP was not otherwise warranted.

We based the EP on delivered prices to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, the Department made deductions from the starting prices for movement expenses, including expenses for foreign inland freight from the plant to the port of exportation and domestic brokerage and handling.<sup>47</sup> Merry and Qingshui did not report or claim any other adjustments to EP.<sup>48</sup>

## IX. NORMAL VALUE

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

The Department previously found that garlic producers in the PRC do not generally track actual labor hours incurred for growing, tending, and harvesting activities and, thus, do not maintain appropriate records which would allow most, if not all, respondents to quantify, report, and substantiate this information. In the 11th administrative review and NSRs, the Department also stated that "should a respondent be able to provide sufficient factual evidence that it maintains the necessary information in its internal books and records that would allow us to establish the completeness and accuracy of the reported FOPs, we will revisit this issue and consider whether to use its reported FOPs in the calculation of NV."<sup>49</sup> In the course of this review, the respondents did not report FOPs related to growing whole garlic bulbs. As such, for the reasons outlined in the Intermediate Input Methodology Memorandum,<sup>50</sup> the Department is applying an "intermediate-product valuation methodology" to the respondents in these preliminary results. Using this methodology, the Department calculated NV by starting with the SV for the garlic

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<sup>47</sup> See Letter from Merry, "Fresh Garlic the People's Republic of China - Response to Sections C and D of the Questionnaire" (September 5, 2013); see also Letter from Qingshui, "Fresh Garlic the People's Republic of China - Response to Sections C and D of the Questionnaire" (September 5, 2013).

<sup>48</sup> *Id.*

<sup>49</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*, 77 FR 34438 (June 22, 2007).

<sup>50</sup> See "New Shipper Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Intermediate Input Methodology," ("Intermediate Input Methodology Memorandum"), dated consistent with this memorandum.

bulb (*i.e.*, the “intermediate product”), adjusting for yield losses during the processing stages, and adding the respondent’s processing costs which were calculated using its reported usage rate for processing fresh garlic.

## **X. FACTOR VALUATIONS**

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

As the basis for NV, Merry and Qingshui provided FOPs used in each of the stages for producing fresh garlic. The Department’s general policy, consistent with section 773(c)(1) of the Act, is to value the FOPs that a respondent uses to produce the subject merchandise. To calculate NV, the Department valued the per-unit factor quantities reported by Merry and Qingshui using publicly-available SVs from Romania. To calculate NV, we multiplied the reported per-unit factor consumption rates by publicly-available SVs. In selecting the SVs, consistent with our past practice, we considered the quality of the data as well as: (1) broad market average; (2) public availability; (3) product specificity; (4) tax and duty exclusivity; and (5) contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to the input SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory, where appropriate. This adjustment is in accordance with the decision of the U.S. Court of Appeals for the Federal Circuit.<sup>51</sup> For those values not contemporaneous with the POR, we adjusted for inflation using data published in the International Monetary Fund's International Financial Statistics.

In accordance with the OTCA 1988 legislative history, the Department continues to apply its long-standing practice of disregarding SVs if it has a reason to believe or suspect the source data may be subsidized.<sup>52</sup> In this regard, the Department previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea, and Thailand, because we determined that these countries maintain broadly available, non-industry specific export subsidies. Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it is reasonable to infer that all exporters from India, Indonesia, South Korea, and Thailand may have benefitted from these subsidies. Additionally, we disregarded prices from NME countries as well as any imports that were labeled as originating from an “unspecified” country because the Department could not be certain that they were not from either an NME country or a country with general export subsidies. For more information regarding the Department’s valuation for the various FOPs, *see* Surrogate Values Memorandum.

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<sup>51</sup> *See Sigma Corp. v. United States*, 117 F.3d 1401, 1408 (Fed. Cir. 1997).

<sup>52</sup> *See Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) (OTCA 1988) at 590.*

## A. Raw Garlic Bulb Input Valuation

As noted above, the raw garlic bulb input is the most significant input because it accounts for the largest percentage of NV, as fresh garlic is produced directly from the raw garlic bulb. As discussed above, the Department is applying an intermediate input methodology for Merry and Qingshui. Therefore, we sought to identify the best available SV for the raw garlic bulb input for production rather than re-construct the cost of raw garlic bulb inputs via the calculation of farming costs involved in growing the input. The Department's practice when selecting the "best available information" for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, SVs which are publicly available, product-specific, representative of a broad market average, tax-exclusive, and contemporaneous with the POR. For the preliminary results of this review, we find that "Farmgate Prices" from "INSSE," a website of the National Institute of Statistics from Romania, provides the most appropriate information available to value raw garlic bulb inputs. For more information regarding the Department's valuation for the raw garlic bulb inputs, *see* Surrogate Values Memorandum.

## B. Labor

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME AD proceedings. In *Labor Methodologies*, the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary SC.<sup>53</sup> In addition, the Department determined that the best data source for industry-specific labor rates is from the International Labor Organization's ("ILO") Yearbook of Labor Statistics.

As noted above, the Department selected Romania as the primary SC for these preliminary results. As a result, the Department obtained and relied on the ILOSTAT data from Romania submitted by Petitioners to value the labor usage rates reported by Merry and Qingshui.

## C. Financial Ratios

The Department's criteria for choosing surrogate companies are the availability of contemporaneous financial statements, comparability to the respondent's experience, and publicly available information.<sup>54</sup> Moreover, for valuing factory overhead ("OH"), selling, general and administrative expenses ("SG&A") and profit, the Department normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the SC.<sup>55</sup> In addition, the CIT has held that in the selection of surrogate producers, the

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<sup>53</sup> *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (*Labor Methodologies*). This notice followed the Federal Circuit decision in *Dorbest Ltd. v. United States*, 604 F.3d 1363, 1372 (Fed. Cir. 2010), which found that the regression-based method for calculating wage rates as stipulated by section 351.408(c)(3) of the Department's regulations uses data not permitted by the statutory requirements laid out in section 773 of the Act.

<sup>54</sup> *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People's Republic of China*, 70 FR 24502 (May 10, 2005) and accompanying Issues and Decision Memorandum at Comment 3.

<sup>55</sup> *See, e.g., Diamond Sawblades and Parts Thereof from the People's Republic of China, Final Determination in the Antidumping Duty Investigation*, 71 FR 29303 (May 22, 2006) and accompanying Issues and Decision Memorandum at Comment 2; *see also* 19 CFR 351.408(c)(4); section 773(c)(4) of the Act.

Department may consider how closely the surrogate producers approximate the NME producer's experience.<sup>56</sup>

The Department received three financial statements, two from Indian companies and one from a Romanian company. As a result of the Department's analysis of these statements, the Department preliminarily determines that the financial statements from the Romanian company SC Legume Fructe Buzau SA ("SC Legume") are the best available information. The Department notes that in the selection of SVs, we have the obligation to select from the information placed on the record. Accordingly, the Department preliminarily calculates OH, SG&A and profit based on SC Legume's financial statements but also invites interested parties to submit additional financial statements for consideration for the final results. Additionally, the Department will search for more appropriate financial statements and, should any be obtained, will place them on the record and provide parties an opportunity to comment on them. For more information regarding the Department's evaluation of the financial statements and the calculation of surrogate financial ratios, *see* Surrogate Values Memorandum.

#### D. Other Surrogate Values

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

## XI. CURRENCY CONVERSION

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

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

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<sup>56</sup> *See Rhodia, Inc. v. United States*, 240 F. Supp. 2d 1247, 1253-1254 (CIT 2002); *see also Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 6836 (February 9, 2005) and accompanying Issues and Decision Memorandum at Comment 1.

**XII. RECOMMENDATION**

We recommend applying the above methodology for these preliminary results.

✓  
Agree

\_\_\_\_\_  
Disagree

Paul Piquado  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

13 MAY 2014  
Date