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Administrative Review
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June 23, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Results of
Antidumping Duty Administrative Review: Fresh Garlic from the
People's Republic of China; 2011-2012 Administrative Review

SUMMARY

The Department of Commerce (the Department) analyzed the surrogate value (SV) comments, supplemental questionnaire responses, case briefs, and rebuttal briefs submitted by interested parties in the administrative review of the antidumping duty order on fresh garlic from the People's Republic of China (PRC). As a result of this analysis, we made changes to the preliminary results. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

BACKGROUND

On December 24, 2013, the Department published the preliminary results of this administrative review.¹ This review covers 139 companies. The mandatory respondents in this review are: Hebei Golden Bird Trading Co., Ltd. (Golden Bird) and Shenzhen Xinboda Industrial Co. Ltd. (Xinboda). In the *Preliminary Results*, we rescinded this administrative review for two companies: Jinxiang Jinma Fruits Vegetables Products Co., Ltd. and Zhengzhou Harmoni Spice Co., Ltd. For these final results, the Department is also rescinding the review with respect to Shijiazhuang Goodman Trading Co., Ltd. (Goodman), who was determined not to have any *bona fide* sales.

¹ See *Fresh Garlic From the People's Republic of China: Preliminary Results and Partial Rescission of the 18th Antidumping Duty Administrative Review; 2011–2012*, 78 FR 77653 (December 24, 2013) (*Preliminary Results*).



On January 23, 2014, Xinboda, Golden Bird, and Petitioners requested a hearing.² Between January 27, 2014, and February 6, 2014, interested parties submitted SV data for consideration in the final results. On April 8, 2014, Petitioners submitted new factual information along with an allegation that Golden Bird had misreported its sales of subject merchandise to the United States during the period of review (POR). From April 14 through April 18, 2014, the Department conducted a verification of Xinboda and its producer Zhengzhou Dadi Garlic Industry Co., Ltd. (Dadi) in Shenzhen, PRC. Between April 16, 2014, and April 28, 2014, Golden Bird responded to Petitioners' April 8, 2014 allegations and Petitioners provided a response to Golden Bird. On April 24, 2014, the Department held an *ex parte* meeting with Petitioners to discuss their allegations against Golden Bird. On May 7, 2014, the Department sent Golden Bird a supplemental questionnaire seeking to confirm the accuracy of the sales information reported by Golden Bird. On May 14, 2014, Petitioners, Golden Bird, Jinxiang Hejia Co., Ltd (Hejia), and Xinboda submitted case briefs. On May 19 and May 23, 2014, the Department held *ex parte* meetings with Golden Bird regarding Golden Bird's request for an extension to file a response to the May 7, 2014 supplemental questionnaire. On May 22, 2014, the parties submitted their rebuttal briefs. Golden Bird responded to the May 7th questionnaire on May 23, 2014. On May 27, 2014, Petitioners submitted their rebuttal briefs. On June 9, 2014, Petitioners submitted a supplemental brief regarding their allegations against Golden Bird. On June 12, 2014, Golden Bird submitted a rebuttal brief regarding Petitioners' allegations. On June 18, 2014, the Department held a public hearing.

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).³

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.

² Petitioners in this review are the Fresh Garlic Producers Association and its individual members: Christopher Ranch L.L.C., The Garlic Company, Valley Garlic, and Vessey and Company, Inc.

³ See *Antidumping Duty Order: Fresh Garlic From the People's Republic of China*, 59 FR 59209 (November 16, 1994).

CORROBORATION OF ADVERSE FACTS AVAILABLE RATE

As discussed below, the Department is relying on total adverse facts available (AFA) with respect to Golden Bird, because it failed to cooperate to the best of its ability in this administrative review. In selecting from the facts otherwise available and making an adverse inference, we found Golden Bird to be part of the PRC-wide entity, and we determined that its dumping margin is the PRC-wide entity rate of \$4.71/kg. Section 776(c) of the Tariff Act of 1930, as amended (the Act) requires the Department to corroborate, to the extent practicable, secondary information used as facts available. Secondary information is defined as “[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”⁴

The SAA provides further that the term “corroborate” means that the Department will satisfy itself that the secondary information to be used has probative value.⁵ Thus, to corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used. The SAA also states that independent sources used to corroborate secondary information may include, for example, published price lists, official import statistics, and customs data, as well as information obtained from interested parties.⁶

The ad valorem rate of 376.67 percent is the highest rate on the record of any segment of this fresh garlic antidumping duty proceeding. This rate was applied to the PRC-wide entity in the original investigation and was consistently applied to the PRC-wide entity until the thirteenth administrative review.⁷ In *Garlic 13*, the Department converted the *ad valorem* rate to a per-unit rate of \$4.71/kg. The rate of \$4.71/kg has been applied to the PRC-wide entity in each review since *Garlic 13*.⁸ Furthermore, the rate selected for the PRC-wide entity was corroborated with transaction-specific margins in a prior administrative review.⁹ No information from this review calls into question its reliability. Thus, the Department finds that this rate continues to be reliable.

⁴ See Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 103-316 (SAA) at 870.

⁵ *Id.* at 870.

⁶ *Id.*

⁷ See *Fresh 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) (*Garlic 13*); see also *Notice of Preliminary Determination of Sales at Less Than Fair Value: Fresh Garlic From the People’s Republic of China*, 59 FR 35310 (July 11, 1994), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Fresh Garlic From the People’s Republic of China*, 59 FR 49058 (September 26, 1994).

⁸ See *Fresh Garlic from the People’s Republic of China: Final Results and Partial Rescission of the 14th Antidumping Duty Administrative Review*, 75 FR 34976 (June 21, 2010) and *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).

⁹ See *Fresh Garlic from the People’s Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Preliminary Results of New Shipper Reviews*, 70 FR 69942 (November 18, 2005), unchanged in *Fresh Garlic from the People’s Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Reviews*, 71 FR 26329 (May 4, 2006).

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico*,¹⁰ the Department disregarded the highest margin in that case as adverse best information available (the predecessor to “facts available”) because the margin was based on another company’s uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been judicially invalidated.

Similar to the reasons the CIT found the PRC-wide entity rate corroborated in *Watanabe Group v. United States*, Court No. 09-00520 Slip Op. 10-139 (CIT December 22, 2010) and *Peer Bearing Company - Changshan v. United States*, 587 F. Supp. 2d 1319 (CIT December 8, 2008), here the Department finds the rate to be corroborated. Specifically, 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 has been applied as the PRC-wide entity rate in over a dozen completed reviews, and (3) was corroborated in a prior review based on an examination of transaction-specific margins in that review.

DISCUSSION OF THE ISSUES

This memorandum discusses the following 21 comments that the parties raised during this administrative review. Below is the list of comments.

- Comment 1: Selection of the Surrogate Country
- Comment 2: Use of MERALCO to Calculate Electricity Rates
- Comment 3: Excluding NME Country Data in Import Statistics
- Comment 4: Excluding Data from Countries with Export Subsidies
- Comment 5: Excluding Outlier (Aberrational) Data Using Statistical Tools
- Comment 6: Deducting Transportation Costs
- Comment 7: Adjusting Brokerage and Handling Fees in CIF
- Comment 8: Adjusting the Philippine ILO 6A Labor Calculation
- Comment 9: Deducting Export Letter of Credit Fees
- Comment 10: Adjusting SVs to Reflect Net kg
- Comment 11: Using CIF Values Instead of FOB Values
- Comment 12: Wholesale versus Farm Gate Prices
- Comment 13: Differential Pricing Methodology Challenge
- Comment 14: Country Wide Rate Challenge
- Comment 15: 15-Day Liquidation Instruction Policy Challenge
- Comment 16: Fraud Allegation Concerning Golden Bird’s Export Declarations to GACC
- Comment 17: Hejia Ministerial Error, Certification of No Shipments
- Comment 18: Separate Rate Request for Goodman
- Comment 19: Weighted Average Margin Calculation for Goodman
- Comment 20: Contemporaneous Calculation of SVs for Goodman
- Comment 21: Separate Briefing Schedule for Golden Bird’s SQR

¹⁰ *Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (*Fresh Cut Flowers from Mexico*).

Comment 1: Selection of the Surrogate Country

A. Surrogate Country Selection Three-Prong Analysis

When the Department is investigating imports from a non-market economy (NME) country, section 773(c)(1) of the Act directs us to base normal value (NV), in most circumstances, on the NME producer's factors of production (FOPs), valued in a surrogate market economy (ME) country, or countries, considered appropriate by the Department. In accordance with section 773(c)(4) of the Tariff Act of 1930, as amended (the Act), in valuing FOPs, the Department shall utilize, to the extent possible, the prices or costs of the FOPs in one or more ME countries that (a) are at a level of economic development comparable to that of the NME country and (b) are significant producers of comparable merchandise. Moreover, it is the Department's practice to select an appropriate surrogate country (SC) based on the availability and reliability of data from the countries.¹¹

For the *Preliminary Results*, we selected the Philippines as the SC from a SC list containing Columbia, Costa Rica, Indonesia, the Philippines, South Africa, and Thailand.¹² We found the Philippines to be a significant producer of comparable merchandise and we were able to tie the garlic prices directly to official government sources, as well as to the FAO data. Further, the Philippine prices were clearly exclusive of taxes and duties.¹³ In short, the Philippines qualified as a significant producer of comparable merchandise, with the best available information.

1. Economic Comparability

Petitioners:

- India is not appropriate, because:
 - There is no information on the record concerning India's GNI during the POR;
 - Respondents fail to establish compelling reasons to look beyond the SC list.
- Thailand is not more economically comparable to the PRC than the Philippines.

Respondents:

- Xinboda argues:
 - India should be the SC, because India is the most economically comparable to the PRC;
 - If the Department does not select India, then it should select Thailand as the SC rather than Philippines, because, of the countries on the SC list, only Thailand is both economically comparable and a significant producer;
 - The Philippines is less economically comparable to the PRC than Thailand.
- Goodman and Golden Bird argue that the Department should select Thailand as the SC and note that Thailand and Philippines are per se economically comparable.

¹¹ See Letter to All Interested Parties, "Fresh Garlic from the People's Republic of China: Surrogate Countries and Surrogate Value Information" (May 2, 2013).

¹² See *Preliminary Results*, and accompanying Preliminary Decision Memorandum at 10.

¹³ *Id.* at 12.

Department's Position: Our long standing practice is to identify those countries at a level of economic development similar to the PRC in terms of gross national income (GNI) from data available in the World Development Report provided by the World Bank.¹⁴ In the *Preliminary Results*, we found that the countries on the SC list, including Thailand and the Philippines, were economically comparable to the PRC in terms of GNI.¹⁵ In these Final Results, we still find that they are equally comparable in terms of economic development.

In accordance with the Department's policy, we will only depart from the SC list and choose a country not on the list, if we find that none of the countries on the list are significant producers or if there are issues regarding the reliability, availability, and quality of data from the countries on the list.¹⁶ Here, as noted above, the Philippines and Thailand are on the list, and we find their data to be reliable, available, and of useable quality. India was not on the SC list. Therefore, India is not as comparable to the PRC's level of economic development as the countries on the list. Because we have SVs from some of the countries on the SC list, there is no need to depart from the SC list. Because the Philippines and Thailand are both on the SC list and therefore equally comparable in terms of economic development, we next evaluate them in terms of significant production of comparable merchandise.

2. Significant Producer of Comparable Merchandise

Petitioners:

- Thailand is inappropriate, because:
 - Department practice makes clear that the standard for significant production varies from case to case and the Department does not apply the *de minimis* margin benchmark to production volumes;
 - The fact that Thailand exports more garlic does not mean that the Philippines is not a significant producer;
 - Thai domestic garlic is very small in diameter and not comparable to Chinese garlic;
 - The physical condition of Thai garlic is characterized by the whole plant, not just the clove.
- The news article offered by Xinboda to show natural disasters impacting Philippines garlic farmers contradicts Xinboda's claim, because the article notes that growing garlic can reduce the impact of extreme weather.
- The Philippines is the correct SC, because:
 - Of the countries on the SC list, garlic from the Philippines possesses physical characteristics most similar to fresh garlic from the PRC;

¹⁴ 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.

¹⁵ None of the interested parties argues for the selection of any of the other countries from the list. See *Preliminary Results*, and accompanying Preliminary Decision Memorandum at 10-11.

¹⁶ See *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 36168 (June 10, 2013) (*17th AR Final*) and accompanying Issues and Decision Memorandum at 11.

- Philippine farms supplied their domestic market with a majority of garlic bulbs domestically consumed during POR, and therefore there was significant production.

Respondents:

- Xinboda argues:
 - The Department must define what significant producer means;
 - The Department’s position is that having any level of production means significant production;
 - India is a significant producer of comparable merchandise;
 - In the alternative to India, Thailand is the only country on the SC list with significant production;
 - The Philippines is not an appropriate SC, because:
 - Garlic production in the Philippines is not comparable to production in the PRC;
 - The Philippines does not have significant production;
 - Natural disasters have severely impacted garlic production in the Philippines, casting doubt on whether it is a significant producer.
- Golden Bird and Xinboda argue that Philippine garlic production is *de minimis* / insignificant.

Department’s Position: Where possible, we relied on the 2011 United Nations Food and Agriculture Organization (FAO) production data for fresh garlic when considering whether any of the countries on the SC list are also significant producers of comparable merchandise.¹⁷ In the *Preliminary Results*, we found both Thailand and the Philippines are significant producers of comparable merchandise.¹⁸ Xinboda mischaracterizes the Department’s position as to the definition of what constitutes a significant producer. Xinboda argues that the Department believes having some production equals significant production.¹⁹ The Department does not agree with Xinboda’s characterization. Rather, the Department relies on the facts of each proceeding to determine whether a country is a significant producer of comparable merchandise or not. Here, we continue to find that the factual information demonstrates that production in the Philippines is significant.²⁰ Although production in the Philippines may only be a small percentage of the overall world production, the PRC accounts for, by far, the most garlic production, and thus most other countries will appear to have minimal production when measured as a percentage of total worldwide production. And, percentage of total world production is but one lens that the Department utilizes to determine whether a country is considered a significant producer. Policy Bulletin 4.01 merely provides suggested methods for the Department to determine whether a country is a significant producer; the bulletin is not an

¹⁷ See *Preliminary Results*, and accompanying Preliminary Decision Memorandum at 10.

¹⁸ *Id.* at 10-11.

¹⁹ See Memorandum from Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, “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.” (May 13, 2014) at 7 (finding, in a SC list showing six countries with production, only two countries as having significant production).

²⁰ See *Preliminary Results*, and accompanying Preliminary Decision Memorandum at 10.

exhaustive list.²¹ Here, the Department relies on a different lens. Reviewing the raw data, the quantity produced in the Philippines surely qualifies as significant.²²

Additionally, Xinboda misreads section 773(c) the Act; the criterion is significant production, not the most production. Consequently, not being the greatest producer of garlic does not preclude a country from being a significant producer.

Finally, as discussed above, India was not on the SC list. Because we found more than one country from the SC list to be a significant producer of comparable merchandise, we need not review countries off the list, in accordance with our policy.²³ Thus, we next evaluated the countries at issue based on quality and public availability of data.

3. Quality and Public Availability of Data

i. Primary Data Input, Garlic Bulb

Petitioners:

- There are several issues with both sets of data from Thailand:
 - The majority of the Thai Rakbankerd.com (MAOC) data are for garlic bundles, which includes price data for items with no significant utility.
 - The nature of the Rakbankerd.com (MAOC) data is unproven and it appears that it has been published by Rakbankerd.com and not the Thai government's MAOC;
 - Respondents have not submitted information to show that the data from Rakbankerd.com (MAOC) are reliable;
 - Golden Bird did not provide any worksheets showing how it aggregated the data and the summary conflicts with the data that Golden Bird provided from the OAE;
 - The data from Golden Bird were truncated and include only anecdotal stories of locals suffering from illegally smuggled garlic from the PRC.
 - The alternative data provided by Golden Bird concerning Thailand's OAE cover only some of the months of the POR and represent garlic completely (*i.e.*, dried garlic *etc.*) different than Chinese garlic.
 - Additionally, the OAE data are different than the Rakbankerd.com (MAOC) data.
 - In 2011, the OAE switched its reporting methodology to only report data for four months of the year and in 2012 it only reported for two months out of the year.
 - The data do not distinguish between garlic bulbs and bundles. Bundles include far more instances of dried garlic.
 - The Thai market is saturated with smuggled garlic and as a result Thai producers are forced to sell their garlic at below the cost of production.

²¹ See Policy Bulletin 4.01.

²² Merriam-Webster Dictionary defines significant as “of a noticeably or measureable large amount.” <http://www.merriam-webster.com/dictionary/significant>.

²³ See Policy Bulletin 4.01.

- The large amounts of smuggled garlic into Thailand distort Thai prices.
 - Thailand is not a superior source of data simply because more garlic is grown there.
- The Philippines is the correct SC, because:
 - The Philippine pricing data are fully contemporaneous with the POR, are tax free, are from the same Philippine government agency supplying the UN, and provide both the farm gate and the wholesale price for fresh garlic on a monthly basis;
 - The Philippines offers higher quality data relative to other potential surrogate countries;
 - The article that Xinboda relies on to show smuggling was published after the POR and there is no record evidence establishing the existence of smuggling during the POR;
 - The information provided by Xinboda shows that government officials met with the private sector, but does not allege an actionable subsidy;
 - The “10 million peso” program cited by Xinboda was announced after the POR;
 - Respondents offered no evidence that the government of the Philippines subsidized garlic farmers.

Respondents:

- Xinboda argues:
 - India has the highest quality of comparable data;
 - In the alternative, the data from Thailand are available and reliable;
 - There is reason to believe that Philippine companies receive subsidies from the government;
 - The Philippines has a significant problem with garlic smuggling;
 - The Department should use the Rakbankerd.com (MAOC) data, as Golden Bird has addressed the concerns of VAT exclusivity.
- Both Xinboda and Golden Bird argue:
 - That Golden Bird addressed questions about Rakbankerd.com (MAOC) data, alleging that the data are exempt from VAT and thus do not include taxes or duties and that the data can be traced back to a reliable government source.

Department’s Position: After evaluating economic comparability and significant production of comparable merchandise, if more than one country remains, it is our practice to select an appropriate SC based on the availability and reliability of data from those countries.²⁴ In the *Preliminary Results*, we looked at the availability of information regarding the most significant FOPs.²⁵ When selecting the “best available information” for valuing FOPs for use in an NME proceeding, pursuant to section 773(c)(1) of the Act, our practice, as affirmed by the Court of International Trade (CIT), is to select values that are: (1) specific; (2) based on broad market average; (3) contemporaneous; (4) exclusive of taxes and duties; and, (5) publicly available.²⁶

²⁴ See Policy Bulletin No. 04.1.

²⁵ See *Preliminary Results*, and accompanying Preliminary Decision Memorandum at 11.

²⁶ 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 at Comment 3; see also *Allied Pacific Food (Dalian) Co. Ltd. v. United States*, 716 F. Supp. 2d 1339, 1343 (CIT 2010).

Prior to the *Preliminary Results*, data regarding the primary input garlic bulb was placed on the record for Thailand and the Philippines.²⁷ A review of that information showed that the garlic produced in both countries is smaller than the large garlic bulbs produced in the PRC.²⁸ We found no clear evidence that one country's garlic was more comparable to Chinese garlic than the other.²⁹ Therefore, we evaluated which country's pricing data were the most reliable.³⁰ Ultimately, we selected the data from the Philippines, because we could neither determine if the Thai data were from a governmental source, nor if the Thai data were exclusive of tax and duties.³¹

After the *Preliminary Results*, Golden Bird submitted an additional set of Thai data³² in order to address our concerns that the Rakbankerd.com (MAOC) data from Thailand is exempt from VAT.³³ We note it is still unclear if the data are free from other taxes or duties. Additionally, with respect to Rakbankerd.com (MAOC) data, we were unable to replicate accessing the data from the Thai government's website per Golden Bird's step-by-step instructions, and therefore we still cannot determine if the data are from a Thai government source.³⁴ Regardless, neither set of Thai data covers the entire POR for fresh garlic,³⁵ and, thus, it cannot be said that the Thai data are the best available information, or even equal to the Philippine data on the record. With respect to Xinboda's allegation concerning the Philippines, we find no record evidence to support Xinboda's allegation that the Philippine companies received actionable subsidies, or that smuggling was an issue, during the POR. For the above reasons, we incorporate our discussion and analysis of this issue from the *Preliminary Results* and continue to find that the data from the Philippines is the best available information.³⁶ Regarding India, we note again that India was not on the SC list, and there is nothing with respect to the Philippine data that suggests we should examine countries not on the SC list in choosing an appropriate surrogate.

ii. Company Financial Statements

We received financial statements from five Philippine companies and two Thai companies.³⁷ For the *Preliminary Results*, we selected financials from the Thai company AgriPure, because we found that AgriPure's primary merchandise (canned sweet corn and fresh vegetables) was the most similar to the fresh garlic produced by Respondents, as compared to the primary merchandise of the other potential surrogate companies.³⁸ We invited interested parties to

²⁷ See *Preliminary Results*, and accompanying Preliminary Decision Memorandum at 12.

²⁸ *Id.* at 11.

²⁹ *Id.* at 12.

³⁰ *Id.*

³¹ *Id.*

³² See Letter from Golden Bird, "Fresh Garlic from the People's Republic of China – Comments and Factual Information Regarding the Selection of the Surrogate Country and Factors of Production in the 18th Antidumping Administrative Review on behalf of Hebei Golden Bird Trading Co., Ltd." (Jan. 27, 2014) (Golden Bird's Surrogate Country Comments) at Attachment 10.

³³ *Id.* at Exhibit 2.

³⁴ See, e.g., *id.* at 4.

³⁵ See *Preliminary Results*, and accompanying Preliminary Decision Memorandum at 12; Golden Bird's Surrogate Country Comments at 10.

³⁶ See *Preliminary Results*, and accompanying Preliminary Decision Memorandum at 11-12.

³⁷ *Id.* at 19.

³⁸ *Id.*

submit additional financial statements for consideration for the final results.³⁹ Petitioners subsequently submitted financial statements from an additional five Philippine companies.⁴⁰ We note that of these ten Philippine financial statements, only LM Arenas produces subject merchandise.

Petitioners:

- We should use financial statements from the Philippine companies that Petitioners placed on the record.
- Petitioners note they submitted financial statements, for five additional Philippine companies, after the *Preliminary Results*.
- These additional Philippine financial statements are superior in quality and quantity and the Department can average them.
- The five financial statements, from the Philippine companies, are the best available information
- Xinboda's allegations concerning the Philippine company LM Arenas are unfounded and Xinboda does not cite to any factual information that indicates LM Arenas sold the garlic to the government at below cost of production, or that the Philippine government resold the garlic that it purchased.
- The Thai financial statements on the record are not suitable sources, because the 2011 statements show that Patum Rice was unprofitable, and adjusting the unconsolidated 2012 statements to remove the other income and rental income show that the company did not make a profit that year from sale of goods.
- Sale of branded products does not disqualify the use of financial statements.

Respondents:

Golden Bird argues:

- The Department should use the unconsolidated financial statements from Patum Rice (Thailand), in place of AgriPure (Thailand);
- Either Patum Rice (Thailand) or AgriPure (Thailand) represents the best available data;
- The 2012 Patum Rice unconsolidated financial statement shows a profit and excludes the subsidy;
- None of Petitioners' proposed companies produce merchandise comparable to peeled or whole garlic.

Golden Bird and Xinboda argue:

- Petitioners' Philippine companies do not meet the requirements of the Act, because they do not produce comparable merchandise;
- Several of the proposed companies are producers of branded merchandise

Xinboda argues:

- One of Petitioners proposed companies, LM Arenas, is essentially supported and run for the Philippines government, because all of its garlic produced was purchased by the Philippine government;

³⁹ *Id.*

⁴⁰ See Letter from Petitioners, "18th Administrative Review of Fresh Garlic from the People's Republic of China – Petitioners' Additional Surrogate Value Information for the Final Results" (January 27, 2014) at Attachments 5A-9A.

- The Department need only find that there is reason to suspect or believe that the Philippines garlic market is subsidized by the government in order to disqualify the Philippines as an SC;
- The Department used Patum Rice (Thai) in the 17th AR and found the information reliable.
- Xinboda adopts and supports Golden Bird’s argument for using Patum Rice (Thai)

Department’s Position: While we used the financial statements from the Thai company AgriPure for the *Preliminary Results*,⁴¹ it is preferable to use financial statements, when available, from the country selected as the SC.⁴² Patum Rice is also a Thai company and therefore not from the primary SC. Additionally, AgriPure produces similar merchandise in addition to garlic, while the Philippine company, LM Arenas, is solely a garlic producer. Therefore, we find LM Arenas to be a producer of identical merchandise. Xinboda summarily argues that LM Arenas is subsidized by the Philippine government without any evidence to corroborate this argument. As the court stated in *Home Meridian Int’l, Inc. v. United States*, “the Department may not rely on conclusory statements of counsel in its review of the record evidence.”⁴³ Therefore, we agree with Petitioners that Xinboda failed to submit factual information that shows LM Arenas is subsidized by the government and find there is no other evidence that provides the Department with a reason to believe or suspect that LM Arenas may have benefitted from countervailable subsidies. As a result, we find that LM Arenas’ financial statements are the best available information. Because LM Arenas is a Philippine producer of garlic, and the Philippines was selected as the SC, we will use LM Arenas’ financial statements in these final results.

B. General Challenge to the Three Prong Surrogate Country Selection Analysis

Xinboda:

- The Department needs to weigh the relative strength of all three SC selection criteria in selecting an SC.
- If the Department were to weigh the relative strength of all three criteria, the Department should choose India or Thailand.
 - Xinboda cites to *Ad Hoc Shrimp* and *Amanda Foods*.⁴⁴

Department’s Position: Both *Ad Hoc Shrimp* and *Amanda Foods* are distinguishable from the issues at present. First, as to India, in both *Ad Hoc Shrimp* and *Amanda Foods*, parties challenged the Department’s decision to choose one potential SC over another, both of which were on the SC list.⁴⁵ Here, India is not on the SC list.⁴⁶ Second, as to Thailand, the court in *Ad Hoc Shrimp* held that weighing relative strength is applicable, “where more than one potential surrogate within that GNI range is a substantial producer of comparable merchandise for which

⁴¹ See *Preliminary Results*, and accompanying Preliminary Decision Memorandum at 9-13.

⁴² See Policy Bulletin No. 04.1.

⁴³ See, e.g., *Home Meridian Int’l, Inc. v. United States*, 865 F. Supp. 2d 1311, 1322 (CIT 2012).

⁴⁴ See *Ad Hoc Shrimp Trade Action Comm. v. United States*, 882 F. Supp. 2d 1366, 1374 (CIT 2012) (*Ad Hoc Shrimp*); *Amanda Foods (Vietnam) Ltd. v. United States*, 647 F. Supp. 2d 1368 (CIT 2009).

⁴⁵ See *Ad Hoc Shrimp Trade*, 882 F. Supp. 2d at 1374 (CIT 2012); *Amanda Foods*, 647 F. Supp. 2d 1368.

⁴⁶ See Memorandum to All Interested Parties, Fresh Garlic from the People’s Republic of China: Surrogate Countries Selection and Surrogate Value Information, May 2, 2013 (SC List).

adequate data is publicly available.”⁴⁷ Here, as discussed above, although Thailand may be a substantial producer of subject merchandise, the Thai data are not as adequate and publicly available as the data from the Philippines. Thus the criteria in *Ad Hoc Shrimp* are not present. Consistent with *Ad Hoc Shrimp* and *Amanda Foods*, the Philippines remains the best choice for SC.

Comment 2: Use of MERALCO to Calculate Electricity Rates

Petitioners:

- The Department should use MERALCO data for the electricity rates, because they are from the Philippine’s largest electricity producer and they are reliable.
- Respondent provides no evidence that MERALCO is solely an urban provider

Golden Bird:

- The MERALCO electricity rates are not better than the rates used in the *Preliminary Results*.
- These rates are from an urban electricity provider.
- MERALCO is an urban electricity supplier and its rates do not apply to rural farmers.

Department’s Position: As described below, we are relying on AFA to determine Golden Bird’s dumping margin. Therefore, Golden Bird’s arguments are moot. However, we are discussing the issue because it pertains to Xinboda.

In the *Preliminary Results*, we used Agripure Holding Public Company’s (Agripure) financial statements to calculate the SV financial ratios. Agripure’s financial statements did not include a separate line item for electricity. In order to avoid double-counting, we did not use electricity consumption reported by respondents for the *Preliminary Results*.⁴⁸

As discussed above, we are now using LM Arenas’ financial statements for these final results. LM Arenas does report electricity as a line item, allowing it to be removed from the financial ratios calculation, and therefore eliminating the issue of double counting electricity.⁴⁹ For these final results, we are using Xinboda’s reported electricity consumption and must apply an SV for electricity.

The SC for these final results is the Philippines. MERALCO data are the only data on the record for a Philippine electricity producer. While Golden Bird argues that MERALCO should not be used because it is an urban electricity provider, Golden Bird does not identify an alternative. Further, we note that the MERALCO data provide separate rates for residential, commercial, and industrial users, allowing us to calculate an appropriate SV rate for respondents, who are

⁴⁷ See *Ad Hoc Shrimp*, 882 F. Supp. 2d at 1374.

⁴⁸ See Memorandum to Gene H. Calvert, “Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China: Surrogate Values for the Preliminary Results” (December 16, 2013) (Preliminary SV Memo) at 5.

⁴⁹ Memorandum to Mark Hoadley, “Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China: Surrogate Values for the Final Results” (June 23, 2014) (Final SV Memo).

industrial users.⁵⁰ Whether MERALCO is urban or rural, is therefore, not relevant. An industrial rate is an industrial rate and generally would not vary whether it was urban or rural. No party submitted evidence suggesting otherwise. Thus, we consider the MERALCO data to contain the best SV rates available in this review and are using them for these final results.

Comment 3: Excluding NME Country Data in Import Statistics

Petitioners:

- Department's long-standing practice is to exclude import data from NME countries.

Golden Bird:

- The factor values must be corrected, because it is inappropriate for the Department to exclude NME Imports.

Department's Position: As Petitioners note, and as we have noted in prior reviews, our long-standing practice is to exclude import prices from NME countries.⁵¹ Not to exclude data from these countries would contradict our longstanding determination that NME prices are unreliable for valuing FOPs.⁵² Excluding NME countries' import data from an SC's imports, regardless of the percentage of the total amount, is consistent with the selection of SVs based on the best available information, in accordance with section 773(c)(1) and (4) of the Act. Golden Bird provided no new evidence or arguments that would persuade us to deviate from this longstanding practice.

Comment 4: Excluding Data from Countries with Export Subsidies

Petitioners:

- The Department's long-standing practice is to exclude import data from countries with export subsidies.
- Golden Bird's interpretation of *China National* is wrong, as it stands for the proposition that any SV relied on by the Department should be as free from distorting subsidies as possible.

Golden Bird:

- It is inappropriate for the Department to exclude data from countries with export subsidies.

Department's Position: As Petitioners note, and as we noted in prior reviews, our long-standing practice is to exclude import prices from countries with export subsidies.⁵³ In accordance with the OTCA 1988 legislative history, we continue to apply our long-standing practice of

⁵⁰ See Final SV Memo at Exhibit 3.

⁵¹ See *17th AR Final*, and accompanying Issues and Decision Memorandum at 19.

⁵² *Id.*

⁵³ *Id.*, and accompanying Issues and Decision Memorandum at 19; see also *Certain Helical Spring Lock Washers From the People's Republic of China*, 74 FR 57653, 57657 (November 9, 2009), *unchanged in* 75 FR 29720 (May 27, 2010).

disregarding SVs if we have reason to believe or suspect the source data may be subsidized.⁵⁴ We also agree with Petitioners that our practice is consistent with *China National*.⁵⁵ Again, Golden Bird provided no new evidence or arguments that would persuade us to deviate from this longstanding practice.

Comment 5: Excluding Outlier (Aberrational) Data Using Statistical Tools

Petitioners:

- Golden Bird has not identified information on the record it believes is aberrational.
- Golden Bird has not demonstrated how any record data is aberrational.
- Golden Bird failed to identify a methodology the Department should use to determine if data are aberrational.

Golden Bird:

- The Department must exclude aberrational or outlier data.
- For the *Preliminary Results*, the Department did not evaluate the import data to determine whether the values were aberrational and therefore not reflective of the in-country values and the best available information.

Department's Position: As described below, in these final results we are relying on AFA to determine Golden Bird's dumping margin. Accordingly, this argument is moot. Nevertheless, we note that no party pointed to any specific data elements that are aberrational, explained why they are aberrational, or offered factual support to substantiate a claim that they are aberrational. Golden Bird's argument, even if not moot, is pure speculation.

Comment 6: Deducting Transportation Costs from AgriPure's Financial Statement

Petitioners:

- Department should continue to include transportation costs because Golden Bird conflates the potential double counting of energy with freight costs.
- The value of raw materials consumed is stated separately, which includes delivery costs.
- In an accounting sense, transportation cost does not include freight-in or freight-out costs

Golden Bird:

- If the Department uses AgriPure's financial statements instead of Patum Rice's unconsolidated financial statements, the Department should deduct transportation costs to avoid double counting transportation expenses.

Department's Position: Although the Department used AgriPure's financial statements in the preliminary results of this administrative review, the Department is using LM Arenas' financial statements to calculate the transportation expenses in these final results. Therefore, this issue of deducting transportation costs is now moot.

⁵⁴ See *Omnibus Trade and Competitiveness Act of 1988* at 590.

⁵⁵ See *China Nat'l Mach. Imp. & Exp. Corp. v. United States*, 264 F. Supp. 2d 1229 (CIT 2003), *aff'd* by *China Nat'l Mach. Imp. & Exp. Corp. v. United States*, 293 F. Supp. 2d 1334 (CIT 2003).

Comment 7: Deducting Transportation Costs and Brokerage and Handling Fees

Petitioners:

- The Global Trade Atlas (GTA) import statistics, either on Free on Board (FOB) or Cost Insurance Freight (CIF) basis, do not include Philippine brokerage and handling. The Department should add foreign brokerage and handling to reflect the costs of importing inputs in the Philippines. Petitioners cite Policy Bulletin 10.2.
- The Department should continue to include Agripure's transportation costs in the SV financial ratios, because Golden Bird conflates the potential double counting of energy with freight costs.
- The value of raw materials consumed is stated separately, which includes delivery costs.
- In an accounting sense, transportation cost does not include freight-in or freight-out costs.

Respondents:

- Golden Bird argues:
 - If the Department uses the Agripure financial statements, it must deduct transportation costs to avoid double counting.
 - The Department should calculate domestic brokerage and handling on a 40 foot container basis rather than the 20 foot container basis used in the *Preliminary Results*.
- Xinboda agrees with Golden Bird that the brokerage and handling fees must be deducted.
- Xinboda and Golden Bird argue that Petitioners have misinterpreted the Policy Bulletin. The Department has no practice for adding brokerage and handling expenses to import SVs.

Department's Position: For these final results we are continuing to calculate domestic brokerage and handling on a 20 foot, not 40 foot, container basis. The SV is a dollar per kilogram cost calculated using data from Doing Business in Philippines 2013, which provides costs for a 20 foot container in the Philippines assumed to weigh 10,000 kilograms.⁵⁶ Golden Bird has not indicated an alternative source on the record for calculating a SV for 40 foot containers. Without an alternative source, the only viable source is the data from Doing Business in Philippines 2013. Thus, we are not changing the domestic brokerage and handling SV for these final results. Additionally, the arguments regarding Agripure's financial statements are moot because we are using the financial statements of LM Arenas for these final results.

We are unpersuaded by Petitioners' argument that CIF prices do not reflect the full cost of an input. Policy Bulletin 10.2 states that "the Department normally obtains import prices that include the international freight costs of shipping the product to the port of the importing country.... However, when the import statistics of the surrogate country do not include such costs, the Department has added SVs for international freight and foreign brokerage and handling charges to the calculation of normal value."⁵⁷ As discussed below, we are using GTA import statistics reported on a CIF basis, which already include the costs of international freight.⁵⁸

⁵⁶ See Petitioners' June 28, 2013 SC/SV Submission at Exhibit P-14.

⁵⁷ See Policy Bulletin Number 10.2 re Inclusion of International Freight Costs When Import Prices Constitute Normal Value (Nov. 1, 2010), <http://enforcement.trade.gov/policy/PB-10.2.pdf>.

⁵⁸ See Comment 10.

Without any further evidence, we have no basis for assuming that all international movement expenses are not already included in the GTA import values. This is consistent with the Department's practice, most recently in *Prestressed Concrete*, where the Department did not add foreign brokerage and handling to the CIF GTA import values.⁵⁹ Thus, we have not added foreign brokerage and handling to the GTA import values for these final results.

Comment 8: Adjusting the Philippine ILO 6A Labor Calculation

Xinboda:

- If we use Philippines, then we must adjust the Philippines ILO 6A Labor Calculation.
 - The Department recently found in *Wood Flooring* that some of the ILO 6A data reported for the Philippines are flawed and misrepresented, resulting in an inappropriately high value.

Department's Position: In *Wood Flooring Preliminary Results*,⁶⁰ the Department used Subclassification 20 of the United Nations' International Standard Classification of All Economic Activities ("ISIC") Revision 3, "Manufacture of Wood and of Products of Wood and Cork, except Furniture." Subsequent to the *Wood Flooring Preliminary Results*, parties filed new information demonstrating that Subclassification 20 was flawed, including an acknowledgement from ILO that the information represented indirect labor costs and not monthly compensation. All parties who commented on the matter were in agreement with the adjustment made by the Department to correct the error. The Department used the adjusted ILO 6A data for the final results in *Wood Flooring*.⁶¹

In the instant review, the Department is using Subclassification 15 of the United Nations' ISIC Revision 3, "15-Manufacture of Food Products and Beverages," a different subclassification than that in *Wood Flooring*. And unlike *Wood Flooring*, the ILO has not indicated that the data are erroneous for Subclassification 15. Moreover, neither Xinboda, nor any other party, provided specific allegations explaining how the data are flawed or provided substantial evidence to support its claim. For these final results we are not making any adjustments or changes to the Labor SV.

Comment 9: Deducting Export Letter of Credit Fees

Xinboda:

- If the Department uses *Doing Business in the Philippines 2013*, then we must deduct export letter of credit fees. Evidence proves that the Doing Business Brokerage and Handling (B&H) cost includes a cost for letter of credit. The Department should deduct this cost from its B&H calculation as Xinboda does not incur this cost.

⁵⁹ See *Prestressed Concrete Steel Rail Tie Wire From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 25572 (May 5, 2014) (*Prestressed Concrete*) and accompanying Issues and Decision Memorandum at 15.

⁶⁰ See *Multilayered Wood Flooring From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 70267 (November 25, 2013) (*Wood Flooring Preliminary Results*)

⁶¹ See *Multilayered Wood Flooring From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 26712 (May 9, 2014) and accompanying Issues and Decision Memorandum (*Wood Flooring*).

Department's Position: The Department did not address this issue in the *Preliminary Results*; however, the Department did address this issue in May 2014, in its final results of the 2011-12 antidumping duty administrative review on Multilayered Wood Flooring from the PRC (Wood Flooring).⁶² In *Wood Flooring*, the Department agreed that *Doing Business in the Philippines 2013* includes letter of credit fees and deducted those fees as quoted in the following text (footnotes omitted):

“We agree with Fine Furniture and Armstrong that the cost of obtaining letters of credit should be excluded from the total B&H costs reported in *Doing Business 2013*. Respondents in this administrative review provided evidence from the World Bank indicating that the cost of obtaining letters of credit is included in the cost of B&H. Specifically, respondents obtained information from the World Bank indicating that the total cost of B&H in the Philippines provided in *Doing Business 2013* includes an average cost of \$50.00 for obtaining a letter of credit.¹³⁷ We found no evidence to suggest that the respondents in this administrative review obtained letters of credit in the process of exporting the merchandise under consideration.

... We note that excluding the cost of obtaining letters of credit from the total cost of B&H in *Doing Business 2013* is also consistent with the Department's remand redetermination in the investigation of this case. Accordingly, for purposes of the final results, we revised the calculation of B&H by deducting the cost of \$50 for obtaining a letter of credit from the total cost of B&H provided in *Doing Business 2013*.”⁶³

The Department is also deducting letter of credit fees from the B&H expenses in this administrative review, consistent with *Wood Flooring*, because we are also calculating the SV for B&H from *Doing Business in the Philippines 2013*.

Comment 10: Adjusting SVs to Reflect Net kg

Petitioners:

- The Department should rely on Philippine import data from Global Trade Atlas, but modify these values to reflect the prices paid by importers in the Philippines, which reflect net kilogram volumes rather than gross kilogram volumes.

Respondents:

- Xinboda argues:
 - The request to use net weights is unreasonable and unsupported by the record;
 - The Department is obligated to make apples to apples comparisons, and if the Department changed to net values, it would not be making an equal comparison.
- Golden Bird argues that the Department properly used gross weight.

⁶² See *Wood Flooring* and accompanying Issues and Decision Memorandum at Comment 4, pp. 31-36.

⁶³ *Id.*, and accompanying Issues and Decision Memorandum at 35-36.

Department's Position: We agree with Xinboda that the Department is obligated to use SVs in its calculations that are on an equivalent basis to inputs reported by respondents. However in *Wooden Bedroom Furniture*, the Department analyzed this issue and determined that price per net kilogram more accurately reflects the total cost of an input. The Department's questionnaire asks respondents to report their FOPs "based on the actual inputs used by your company,"⁶⁴ *i.e.*, net quantity in kilograms. Relying on the gross kilograms price would not completely capture total input cost because using gross kilograms would include the weight of packaging. Therefore, for these final results we are using net kilogram prices as the SV for inputs.

Comment 11: Using CIF Values Instead of FOB Values

Petitioners:

- The Department should rely on Philippine import data from Global Trade Atlas, but modify these values to reflect CIF values (instead of FOB), so that they reflect prices paid by importers in the Philippines to obtain them (*i.e.*, net rates versus gross rates).

Golden Bird:

- The Department properly used CIF values.

Department's Position: When possible, the Department's practice is to use CIF prices for SV of inputs. Policy Bulletin 10.2 states that "When relying on surrogate country import statistics to value inputs, the Department normally obtains import prices that include the international freight costs of shipping the product to the port of the importing country." When using FOB values, the Department normally adds the cost of international freight and foreign brokerage and handling charges to normal value to make the import values comparable to CIF.⁶⁵ In the *Preliminary Results*, we used FOB prices and added international freight charges.⁶⁶ After the *Preliminary Results*, Petitioners submitted SV comments indicating that the GTA Extra Data Field Module provides prices that are on CIF terms and based on net weight. Because these GTA import values are inclusive of international freight costs to the Philippines, we are using the GTA values reported in the "KN" field as SVs for these final results.

Comment 12: Wholesale versus Farm Gate Prices

Petitioners:

- The Department should value Garlic bulbs based on wholesale prices published by the Philippine Bureau of Agricultural Statistics.
- Respondents' processors buy their garlic inputs from wholesalers that provide logistical and cold storage services that are incorporated into the price paid by the processors.
- Golden Bird's processor sources garlic in quantities that far exceed any quantities that could be purchased from small family-operated farms in the PRC.
- Data placed on the record by Petitioners suggests Xinboda (Dadi) and Golden Bird (Cangshan) are getting their supply from a wholesaler instead of from small farmers.

⁶⁴ See Golden Bird's questionnaire issued April 16, 2013, at Section D-1.

⁶⁵ See Policy Bulletin 10.2

⁶⁶ See *Preliminary Results*, and accompanying Issues and Decision Memorandum at 17

- The garlic input bulbs reflect the value of physical preparation, movement charges, and storage expenses far beyond the farm gate, making it inappropriate for the Department to rely on an SV reflecting a farm gate price.

Respondents:

Golden Bird argues:

- Wholesale prices are not appropriate.
- Petitioners seem focused on the concept that a farm must be small in size.
- The size of the farm is not important, but rather the level of trade at which the farms operate.
- The farmers made their sales directly to Cangshan who provided the necessary cold storage.

Xinboda argues:

- Nothing on the record supports the assertion that respondents purchased through middlemen.
- The articles that Petitioners submitted were vague and specific to only a few small farmers in the PRC.
- The Department verified that Xinboda’s supplier, Dadi, is surrounded by farms.
- Petitioners’ information concerning the size of the average garlic farm does not negate the possibility of larger farms.
- Petitioners’ argument was rejected in the two prior reviews.
- Petitioners provide no record citation for their claim that Chinese garlic has low yield. This garlic is grown in the “garlic bread basket region of the world” and has high yield.

Department Position: As we stated in *Garlic 16*, the Department focuses on the price that the processor pays when identifying a SV.⁶⁷ As we also found in that same and subsequent reviews, while respondents’ prices for raw garlic bulbs are not identical to farm gate prices due to some degree of extra processing, their prices are more similar to farm gate prices than wholesale prices. Thus, the Department typically seeks farm gate prices as SVs for respondents’ raw garlic bulb purchases.

In *Garlic 16*, in response to nearly identical arguments from Petitioners, we concluded:

{T}he 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

⁶⁷ *Fresh Garlic from the People's Republic of China: Final Results of the 2009-2010 Administrative Review of the Antidumping Duty Order*, 77 FR 34346 (June 11, 2012) and accompanying Issues and Decision Memorandum (*Garlic 16*) at 19-23.

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.

Again in this review, after reviewing Petitioners' information, the Department finds that Petitioners have not adequately documented their claims. In particular, as in the past, Petitioners' information cannot be linked to respondents. Moreover, in this review, verification of Xinboda uncovered no evidence of unreported middlemen or processors supplying raw garlic bulbs. While the Department is applying AFA to determine a rate for Golden Bird, we cannot, based on the information presented, conclude that Xinboda's supply of raw garlic bulbs is significantly different from what it has reported.

Therefore, the Department continues to find that farm gate prices are the best match in terms of level of trade and processing for the raw garlic bulbs at issue and we continue to apply the farm gate prices reported by CountrySTAT Philippines.

Comment 13: Differential Pricing Methodology Challenge

Petitioners:

- The Department has the discretion to apply the alternative methodology in administrative reviews. Under *Chevron*, the Department has the authority to fill gaps in legislation.
- The Department did provide adequate notice and comment under the APA when it solicited two rounds of public comments on the appropriate targeted dumping analysis.
- Xinboda provides no support for its argument that the Department applied Cohen's D incorrectly.
- Xinboda's arguments are not new and have been addressed previously by the Department.

Xinboda:

- The Department lacks statutory authority to conduct a targeted dumping analysis in this administrative review.
- The 1997 targeting dumping regulations were not properly withdrawn and are still in effect.
- Differential Pricing is new and has not been sufficiently disclosed or submitted for notice and comment.
- The Department incorrectly applied the Cohen's D calculation:
 - The Department's analysis determines variance based on a simple average rather than on a weighted average.
 - The Department cannot necessarily apply the Cohen's *d* test whenever it has at least two observations. There is a positive bias when sample size is less than 20, making Cohen's D methodologically unsound.
 - Cohen's D is not a test of statistical significance, it is a standardized measure of the difference between two sample means.
- Differential Pricing is flawed because it includes sales below average prices that are not dumped in its calculation and sales above average prices.
- NME cases assign one single 12-month normal value per control number, which drives some export prices below and some prices below normal value artificially.

Department's Position: Because the Department applied its standard methodology (the A-to-A method) in the *Preliminary Results* and in these final results to calculate Xinboda's weighted-average dumping margin, Xinboda's arguments are moot.

Comment 14: Country Wide Rate Challenge

Petitioners:

- Department rejected similar arguments in the 16th AR of Fresh Garlic.

Respondents:

Golden Bird and Goodman argue:

- The Department cannot use the \$4.71 per kg PRC-wide rate, because the \$4.71 rate was established prior to the current law and is over 20 years old;
- The Department conducted numerous ARs and New Shipper Reviews (NSRs) since the \$4.71 rate was established – these are actual experience, so the original margin is irrelevant now;
- The Department provided no record evidence that the \$4.71 rate approximates any of their calculated rates;
- That any claims that the countrywide rate is reliable and relevant are not consistent with the record;
- The Department can select a rate from a prior NSR or an AR, but the \$4.71 rate was never calculated by the Department;
- The Department must select a rate that has a rational relationship to reality;
- The Department cannot use rate that is based on data more than 20 years old;
- The law was changed in 1994, invalidating rates calculated prior.

Department's Position: As described below, we are rescinding this administrative review with respect to Goodman and therefore this issue is moot as to Goodman. With respect to Golden Bird, as described below, we are relying AFA to determine its dumping margin. We have addressed Golden Bird's arguments regarding this rate in our discussion of "corroboration" above.

Comment 15: 15-Day Liquidation Instruction Policy Challenge

Petitioners:

- Department rejected this argument in the prior two reviews of this order.

Golden Bird:

- The 15-day liquidation instruction policy is contrary to law and must be modified.
- The Department's policy has been subject to review and the CIT has held the policy contrary to law in the following cases.
 - *Tianjin Machinery Import & Export Corp. v. United States*, Slip Op. 04-125 (CIT 2004) (*Tianjin Machinery*)
 - *Mittal Steel Galati SA v. United States*, Slip Op. 07-73 (CIT 2007)
- The policy conflicts with the Act and the Department's regulations:

- 19 USC 1675 provides for the Department to establish procedures for the correction of ministerial errors in final determinations.
- 19 CFR 351.224 provides a clear schedule for interested parties to file ministerial errors and requires that the Secretary analyze comments and correct any significant ministerial errors with 30 days after publication.
- Rule 3(a)(2) of the CIT allows interested parties to challenge a determination by filing a summons 30 days after publication of the results in the *Federal Register* and a complaint 60 days after.

Department's Position: The Department addressed this issue in the last two reviews and rejected the arguments against its 15-day liquidation policy.⁶⁸ Golden Bird's arguments almost mirror Jinan Farmlady Trading Co. Ltd.'s arguments in *Garlic 16*.⁶⁹ The Department intends to continue its policy of issuing liquidation instructions 15 days after the publication of these final results as explained below. The Department restates its position from *Garlic 16*.

The CIT examined the Department's 15-day liquidation policy in *Mittal Steel II* and concluded that it was a reasonable statutory interpretation.⁷⁰ After noting that the Department developed the 15-day policy pursuant to 19 USC 1675(a)(3) to facilitate timely liquidations,⁷¹ the CIT determined that "Customs cannot liquidate promptly if Commerce does not issue the instructions in a timely manner."⁷² The CIT also determined that the 15-day policy 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."⁷³ 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."⁷⁴ 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."⁷⁵ In doing so, the CIT also relied upon *Mukand*,⁷⁶ and upon *Mittal Steel I*.⁷⁷

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 be accorded, if possible, to every

⁶⁸ See *Garlic 16* at Comment 13 and *Garlic 17* at Comment 2.

⁶⁹ See *Garlic 16* at Comment 13 on pp. 58-59.

⁷⁰ See *Mittal Steel Galati S.A. v. United States*, 502 F. Supp. 2d 1295 (CIT 2007) (*Mittal Steel II*) at 1317.

⁷¹ *Id.* at 1314.

⁷² *Id.* at 1316.

⁷³ *Id.* (citation omitted).

⁷⁴ *Id.* at 1317.

⁷⁵ *Id.*

⁷⁶ 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 . . .").

⁷⁷ See *Mittal Steel Point Lisas Ltd. v. United States*, 491 F. Supp. 2d 1222 (CIT 2007) (sustaining 15-day policy). (*Mittal Steel I*).

word.”⁷⁸ 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.⁷⁹ 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.⁸⁰ We recognize that other decisions by the CIT have disagreed with the ruling in *Mittal Steel II* that the 15-day policy is reasonable.⁸¹ 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.⁸²

Golden Bird’s arguments regarding ministerial error allegations do not undermine our policy of issuing liquidation instructions 15 days after publication. The Department’s general practice is to withhold issuing instructions until a decision upon the allegation is issued to the parties. If the Department finds that an error does exist, but the error does not affect all entries covered by the final results, the Department will issue CBP instructions in accordance with its 15-day policy for those entries *not* affected by the allegation, because the six-month window prior to deemed liquidation begins to run from the issuance of the final results.⁸³ If the Department finds that the error is not ministerial, the Department places a memorandum on the record of the proceeding. There is no set time for the issuance of these decisions. Depending upon the specific facts of the case, they could be issued within or outside of the normal 30-day time period in the regulations. Once the decision is issued, a reasonable period of time is allowed for the party to contact the Department of Justice to circulate its draft preliminary injunction. Of course, this time is not unlimited because the deemed liquidation deadline in 19 U.S.C. 1504(d) is fixed from the date of the final results.

If, however, the Department determines that a ministerial error allegation has merit and that there is a ministerial error, the Department generally issues a memorandum to the record notifying the parties and subsequently publishes amended final results fixing the error.⁸⁴ The amended final results reset the clock with respect to the 15-day policy for the affected entries. Thereafter, the Department issues the liquidation instructions to CBP concerning those entries subject to the

⁷⁸ 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)).

⁷⁹ See *Zenith Radio Corp. v. United States*, 710 F.2d 806 (Fed. Cir. 1983).

⁸⁰ 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)).

⁸¹ See, e.g., *Tianjin Machinery*.

⁸² See Announcement Concerning Issuance of Liquidation Instructions Reflecting Results of Administrative Reviews (August 9, 2010).

⁸³ See *Mazak Corp. v. United States*, 659 F. Supp. 2d 1352, 1360-62 (Ct. Int’l Trade 2009).

⁸⁴ See 19 CFR 351.224(e).

amended final results 15 days after the issuance of the amended final results.⁸⁵ In short, our 15-day liquidation policy is not inconsistent with any provision of law regarding ministerial errors.

Comment 16: Fraud Allegation Concerning Golden Bird’s Export Declarations to GACC

Background

In its Section A questionnaire response (Section A QR) of May 10, 2013, Golden Bird certified to the Department that it exported to the United States a specific quantity of subject merchandise during the POR.⁸⁶ In the same response, it certified that its sole supplier during the POR was Cangshan Hongyan Vegetables and Foods Co., Ltd. (Cangshan), and that Cangshan supplied garlic to no other company but Golden Bird.⁸⁷ Section 777A(c)(1) of the Act directs the Department to calculate individual weighted average dumping margins for each known producer/exporter of subject merchandise.⁸⁸ However, if it is not practicable to individually examine all companies subject to the review, section 777A(c)(2) of the Act allows the Department to limit our examination to a reasonable number of companies.⁸⁹ As a result of resource constraints, we limited our selection of mandatory respondents in this review to the two exporters accounting for the largest volume of subject merchandise. During the surrogate selection process for this review, the CBP entry-data showed that a certain number of shipments that entered the United States were identified as being manufactured by Golden Bird, but were entered under case numbers assigned to other companies.⁹⁰ Golden Bird maintains that this is a discrepancy on the CBP side.⁹¹ Regardless, based upon the CBP entry-data, we selected Golden Bird as one of two mandatory respondents for this review.⁹²

Subsequently, on April 7, 2014, Petitioners requested that we grant an extension to the time to submit new factual information on the record of this review.⁹³ Petitioners received information from the Port Import Export Reporting Service (PIERS) purporting to show that the export data from the General Administration of the Customs of China (GACC) reflected Golden Bird being the exporter of record into the United States for an amount of subject merchandise significantly less than what Golden Bird declared to the Department or reported to CBP.⁹⁴ This information also purported to show that a specific number of the Chinese exporters subject to the country-

⁸⁵ See, e.g., *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 78 FR 48415, 48416 (August 8, 2013) (amended final results); *Certain Steel Nails from the People’s Republic of China*, 78 FR 24721, 24722 (April 26, 2013) (amended final results).

⁸⁶ Letter from Golden Bird, “Fresh Garlic from the People’s Republic of China – SAQR in 18th Antidumping Administrative Review filed on Behalf of Hebei Golden Bird Trading Co., Ltd.” (May 10, 2013) (Golden Bird’s Section A QR) at A-4.

⁸⁷ *Id.* at A-14 and A-25-A-26.

⁸⁸ See also 19 CFR 351.201(c).

⁸⁹ See also SAA, H.R. Doc. No. 103-316, vol. 1 at 872 (1994).

⁹⁰ See Memorandum from Nicholas Czajkowski, Acting Program Manager, to Barbara Tillman, Director, “Antidumping Duty Administrative Review of Fresh Garlic from the People’s Republic of China: Respondent Selection” (April 15, 2014) (Respondent Selection Memo) at 2.

⁹¹ *Id.* at 3.

⁹² *Id.* at 6.

⁹³ See Letter from Petitioners, “18th Administrative Review of Fresh Garlic from the People’s Republic of China – Petitioners’ Request for Investigation of Substantial Discrepancies Between Golden Bird’s Volume of POR Exports Reported to Commerce/CBP and Chinese Customs Authorities” (April 7, 2014) (Petitioners’ Substantial Discrepancies Letter) at 1-2.

⁹⁴ *Id.* at 2.

wide rate were recorded by the GACC as exporting to the United States during the POR.⁹⁵ During the POR, however, there was no corresponding entry on the CBP side for any of these exporters.⁹⁶ Petitioners alleged that this information indicated that these companies were exporting under a shipper name and number from one or more other entities, or that one or more other entities were exporting the subject merchandise on their behalf. Petitioners alleged that if true, this information would demonstrate the existence of a scheme to circumvent customs duties totaling tens-of-millions of dollars each year. After carefully considering the matter, and the subsequent submissions by the interested parties,⁹⁷ we granted Petitioners' extension request.⁹⁸

Golden Bird was not verified by Department officials during this review, because Golden Bird was verified by Department officials in the 17th AR.⁹⁹ The verification report from the 17th AR was placed on the record of this proceeding.¹⁰⁰ Relevant here, is that, during the verification of Cangshan, Golden Bird's sole supplier of subject merchandise, Department officials observed a large cold storage locker full of garlic stems within Cangshan's facility.¹⁰¹ This, however, was during a period in which Cangshan explained its facility was not in operations.¹⁰² When queried about the discovery, Cangshan explained that the garlic was not its garlic, that the cold storage locker belonged to the landlord, and that the locker was not rented by Cangshan.¹⁰³ Department officials were unable to verify the accuracy of this explanation.¹⁰⁴

Based on Petitioners' serious allegation,¹⁰⁵ and given the above referenced, past peculiarities with the CBP entry-data and at the 17th AR verification, we sent a supplemental questionnaire to Golden Bird.¹⁰⁶ The supplemental questionnaire requested that Golden Bird provide Chinese customs export declaration forms (CEDFs) and any other related documentation, demonstrating the amount of garlic exports it declared to the GACC during the POR, and explain, if applicable, any discrepancies between what it reported to the GACC and what it reported to the Department

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ See Letter from Golden Bird, "Fresh Garlic from the People's Republic of China – Comments on Petitioners' Allegations of Discrepancies in Golden Bird's Exports During the 18th Antidumping Administrative Review POR – filed on behalf of Hebei Golden Bird Trading Co., Ltd." (April 16, 2014) (Golden Bird Comments on Petitioners' Allegations); Letter from Petitioners, "18th Administrative Review of Fresh Garlic from the People's Republic of China – Petitioners' Response to Golden Bird's April 16, 2014 Submission" (April 28, 2014).

⁹⁸ See Letter from Gene Calvert, Acting Program Manager, "Administrative Review of Antidumping Duty Order on Fresh Garlic from the People's Republic of China, 2011-2012; Extension Request to Accept New Factual Information on the Record of Proceeding" (May 7, 2014) at 1.

⁹⁹ See Memorandum to the File from David Lindgren, "Antidumping Duty Administrative Review of Fresh Garlic from the People's Republic of China: Placing Golden Bird's Verification Report from Previous Administrative Review on Record" (August 15, 2013) at Attachment.

¹⁰⁰ *Id.* at 1.

¹⁰¹ *Id.* at Attachment.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ See Petitioners' Substantial Discrepancies Letter at 2-3.

¹⁰⁶ See Letter from Edward C. Yang, Director AD/CVD Operations Office VII, to Golden Bird, "2011-2012 Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Supplemental Questionnaire" (May 7, 2014) (Supplemental Questionnaire Letter).

and to CBP.¹⁰⁷ We provided Golden Bird 16 days to respond to the supplemental questionnaire. In its Supplemental Questionnaire Response (SQR), Golden Bird disclosed that it did not have all of the documents that we requested in our supplemental questionnaire.¹⁰⁸ Ultimately, Golden Bird only produced partially completed CEDFs, for a fraction of the POR.¹⁰⁹ The CEDFs evidence a smaller amount of exported subject merchandise than reflected in the Section A QR or the CPB entry-data. The amount of subject merchandise reported to the GACC, according to the CEDFs Golden Bird provided, although a larger number than the PIERS data Petitioners provided, is closer in amount to the PIERS data than that reflected in the Section A QR or the CPB entry-data.¹¹⁰

Summary of Parties' Arguments

Petitioners:

- The PIERS data shows that Golden Bird declared to the GACC being the exporter of record for a significantly smaller amount of subject merchandise into the United States during the POR than what Golden Bird declared to the Department or reported to CBP.
- The PIERS data shows that a specific number of the companies subject to the PRC country-wide rate were reported to GACC as exporting to the United States, but are not listed on the CBP data as exporting into the United States during the POR.
- Golden Bird is likely exporting subject merchandise on behalf of one or more of these Chinese companies that are subject to the PRC country-wide rate of \$4.71/kg, or allowing one or more of these companies to use its shipping number.
- The amount of cash duty deposits avoided under this scheme would total several million dollars for the POR.
- Golden Bird's SQR is fundamentally deficient, because Golden Bird submitted partially-completed CEDFs for only some of the POR accounting for only some of the amount Golden Bird certified to the Department as exporting.
- The GACC regulations require exporters to keep CEDFs on file for a period of three years.
- None of the prices on the submitted CEDFs can be reconciled with the prices in Golden Bird's U.S. Sales Database.
- The unit prices reported in the U.S. Sales Database for both *whole* and *peeled* garlic bulbs are greater than the unit price listed on the submitted CEDFs.
- The total discrepancy between what is listed on the documents submitted versus what was reported in the U.S. sales database, for just the documents submitted, is a specific dollar amount.
- The export declaration forms Golden Bird submitted with its SQR do not contain the stamps or chops from the export agent, the local customs office, or the port authority.
- Without the stamps, Golden Bird would not have been able to load the subject merchandise on a vessel for exportation, thus the forms are invalid and incomplete.

¹⁰⁷ *Id.*

¹⁰⁸ See Letter from Golden Bird, "Fresh Garlic from the People's Republic of China – Supplemental Questionnaire Response ("SQR") in 18th Antidumping Administrative Review filed on Behalf of Hebei Golden Bird Trading Co., Ltd." (May 23, 2014) (Golden Bird SQR) at Q1.

¹⁰⁹ *Id.* at Exhibit 3.

¹¹⁰ *Id.* at Exhibit 3.

- The Department should rely on AFA, because:
 - Golden Bird would not have been selected as a mandatory respondent if it only declared to CBP the amount it attempted to substantiate in its SQR;
 - Golden Bird's SQR statements make clear that it was not in compliance with the law and regulations of the PRC;
 - The reliability of the documents Golden Bird submitted is undermined by the uniform discrepancies between the unit prices identified in the submitted documents and the unit prices in its U.S. Sales Database;
 - The immense deficiencies in the SQR render it unreliable and the Department cannot use data Golden Bird submitted as the basis for calculating a company specific margin.
- The designation of Business Protected Information (BPI) was proper, because it relates to confidential aspects of PIERS operations, and its release could disclose the source of the data and the means by which this foreign market researcher obtains the information.

Golden Bird:

- The data from PIERS:
 - May contain errors, be incomplete, or be fraudulent;
 - Was not warranted by PIERS;
 - Was not certified for completeness or accuracy;
 - Was improperly designated as BPI by Petitioners;
 - Is not an accurate measure of a particular exporter's data;
 - While similar, does not match the data reported to CBP or the CEDFs Golden Bird submitted in its SQR.
- The Department should not have adopted these procedures for the supplemental questionnaire, because:
 - The deadline to submit new factual information passed;
 - The information presented by Petitioners is not new;
 - Petitioners provided no evidence that the PIERS data was not available before the deadline to submit factual information.
- There are several possibilities to explain why it is missing the requested CEDFs:
 - Golden Bird used several customs agents during the POR, and Golden Bird did not have enough time to contact them all;
 - The customs agents may or may not send along the customs forms to Golden Bird;
 - Even if the customs agent sends along the documents, Golden Bird may not keep them due to lack of storage space;
 - Golden Bird also may not keep the documents, because the PRC changed its VAT refund policy in January of 2012, and so there is no longer an incentive to maintain these files.
- In order to substantiate the remaining amount it reported to the Department as exporting, Golden Bird sent along invoices, bills of lading, and credit confirmations, for payments received in October of 2012 (*i.e.*, the "backfill").
- The Department's function is not to enforce Chinese law.

- The AMS system confirms Golden Bird was responsible for the shipments since no third-party could export subject merchandise to the United States on behalf of Golden Bird.
- If the exporter is not correctly identified in the Automated Manifest System (AMS System), the goods are denied entry into the United States.
- Petitioners provide only the PIERS data as evidence for their allegation.
- Neither the Department, nor Petitioners, raised the issue of an exporter needing to present copies of CEDFs or that Golden Bird was not the exporter, during the verification for the 17th AR.
- Some of the shipping discrepancy alleged by Petitioners could be reduced if Golden Bird had more time to collect additional customs declaration forms.
- Petitioners added new information to the record under the guise of rebutting, clarifying, or correcting Golden Bird's SQR.
- Because of the amount of time allocated for the case brief schedule for the SQR, Golden Bird was denied an opportunity to confirm whether the regulations from the PRC that Petitioners placed on the record in their case brief were subject to changes in the VAT refund policy.
- Petitioners did not provide a legal opinion from Chinese counsel to confirm that the regulations they placed on the record were enforced by the PRC.
- Under Petitioners' logic, no exporter's data is correct, thus, no Chinese exporter follows the law.
- Golden Bird's interests of concealing information from its competitors are served by not reporting the correct prices on the CEDFs to the GACC.
- The correct price information is not pertinent; instead the correct quantity figure is important.
- It is uncontested it is the exporter and accurately responded to the Department's initial questionnaire as the seller.
- The case cited by Petitioners, *Max Fortune*, is distinguishable, because the facts in that case showed multiple reporting and verification failures.
- The bills of lading Golden Bird submitted with its SQR show that it was the shipper of subject merchandise and complied with the laws of the PRC.
- Petitioners are correct that an exporter cannot load the subject merchandise onto a vessel unless the CEDFs have the proper stamps.

Department's Position:

Issuance of Supplemental Questionnaire

As a preliminary matter, we address Golden Bird's concern over the issuance of the supplemental questionnaire and the information requested in it. Golden Bird argues that the Department did not request submission of the CEDFs at verification, when the Department verified Golden Bird's sales and exports figures in the 17th AR.¹¹¹ We note that, while we often do not request CEDFs in a supplemental questionnaire, we may adapt our views and practices to

¹¹¹ Rebuttal to Petitioners' Supplemental Brief Regarding Golden Bird (June 12, 2014) (Golden Bird's SQR Rebuttal) at 5.

the particular circumstances of the case at hand.¹¹² The case at hand requires such adaptation. In the present case, a documented fraud allegation from Petitioners, combined with two earlier irregularities, indicated a potential, significant deficiency with Golden Bird's questionnaire responses, previously undetected. This prompted us to send a supplemental questionnaire to Golden Bird allowing the company an opportunity to rebut this allegation and substantiate the amount it declared to the GACC, explain any discrepancies between this amount and the amount reported to the Department and to CBP, and, if applicable, correct the record.¹¹³ The supplemental questionnaire requested information a Chinese exporter is required to maintain on file,¹¹⁴ and information needed to confirm the accuracy of a fundamental fact in a review - the amount of subject merchandise exported to the United States. Consistent with past proceedings, Golden Bird's supplemental questionnaire only requested the type of information we may ask for in a proceeding or that the exporter is otherwise required to maintain.¹¹⁵ At verification, Golden Bird would have been required to produce a "sales trace" package of documents, a standard package of documents tracing a sale from purchase order to delivery. This package would include documents that Golden Bird would have submitted to the GACC to export the subject merchandise.¹¹⁶ On the Department's boiler-plate verification agenda, we ask the respondent being verified to include, in the sales trace package, the "export licenses."¹¹⁷ (The Department has used the terms "export licenses" and "export declarations" interchangeably.¹¹⁸) As discussed above, Golden Bird was verified in the 17th AR. Past participation in a proceeding is "relevant to notice, knowledge and reliance issues."¹¹⁹ Given this, Golden Bird could reasonably be expected to have notice of the necessity to maintain these types of records.¹²⁰ Moreover, the other mandatory respondent in this administrative review, Xinboda, provided these exact documents in its sales traces during verification for this administrative review.¹²¹ Xinboda's production of these documents further evinces that these documents are either maintained in the normal course of business or are readily attainable. Therefore, we find Golden Bird's objection to having to produce documents it may be required to produce at verification, unconvincing.

Grant of Extension Based on Good Cause

Next, we address Golden Bird's objection to the Department granting Petitioners' extension request to place new factual information on the record. As discussed above, we granted this request under 19 CFR 351.302(b), because of the documented fraud allegation and the other irregularities. The regulation in force at the time allows the Department to grant an extension

¹¹² *MTZ Polyfilms, Ltd. v. United States*, 717 F. Supp. 2d 1346, 1365 (CIT 2010); cf. *Cinsa, S.A. de C.V. v. United States*, 21 C.I.T. 341, 349 (CIT 1997) (holding that the Department is not obligated to follow prior decisions but must explain departures from prior methodologies). Here, the Department is not departing from any prior practice or methodology. Instead, the Department is asking for Golden Bird to confirm the accuracy of the information it provided.

¹¹³ See Supplemental Questionnaire Letter at Attachment.

¹¹⁴ See below discussion concerning record requirements imposed by the GACC.

¹¹⁵ See, e.g., Letter from Gene Calvert, Acting Program Manager, to Xinboda, "2011-2012 Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China" (March 25, 2014) (Xinboda Verification Agenda) at 12.

¹¹⁶ See, e.g., Xinboda's Verification Exhibit VII at 5 (exhibiting the CEDF for that sales trace).

¹¹⁷ See, e.g., Xinboda Verification Agenda at 12.

¹¹⁸ Compare *id.* with Supplemental Questionnaire Letter at Attachment.

¹¹⁹ See *Gourmet Equip. Corp. v. United States*, 24 C.I.T. 572, 577-78 (CIT 2000).

¹²⁰ See also the below discussion concerning record requirements imposed by the GACC.

¹²¹ See Xinboda's Verification Exhibit VII at 5.

request when the party asking for the extension demonstrates good cause.¹²² Golden Bird contends that “Petitioners provide no evidence the GACC data were not available well before the expiration” of the time to submit new factual information.¹²³ However, Golden Bird fails to provide any evidence to substantiate its claim that this specific report existed well in advance of when Petitioners requested their extension. Instead, Golden Bird summarily alleges this report existed well before the date of submission, because it concerns data from the POR.¹²⁴ Aside from Golden Bird’s allegation that Petitioners had the information before, Golden Bird does not assert that Petitioners failed to demonstrate good cause. In response, Petitioners contend that they “only recently became aware of the significant discrepancy” prior to requesting the extension.¹²⁵ The Department recognizes that information may exist, well before a party becomes aware of the information. Because Petitioners certify they were unaware of the data,¹²⁶ given the lack of any information indicating otherwise, coupled with the serious nature of the allegations, leads the Department to find that Petitioners demonstrated good cause sufficient to grant the extension.

BPI That may Reveal The Identity of a Foreign Researcher

Next, we address Golden Bird’s concern over Petitioners’ designation of elements of the PIERS data as BPI. We disagree with Golden Bird that Petitioners’ designation of the PIERS data as BPI was improper. Instead, we agree with Petitioners that the designation of BPI was proper in this circumstance, because disclosing the source of this type of PIERS data risks disclosing the identity of the foreign researcher who gathered it. Disclosing the identity of the foreign researcher, in turn, could hinder the researcher from gathering the data in the future. If this data source is revealed, we find that it could cause substantial harm to the competitive position of Petitioners. Thus, we find that the designation of this type of PIERS data as BPI was proper.

Reliability of PIERS Data

Next, we address Golden Bird’s allegations concerning the reliability of the PIERS data. As discussed above, the supplemental questionnaire was not based upon the PIERS data alone, but rather the documented allegation, combined with the irregularities in Golden Bird’s reporting. Indeed, in our supplemental questionnaire, we provided Golden Bird an opportunity to “explain any discrepancies between the data {it} reported to the GACC and the data reported to {CBP} during the POR.”¹²⁷ We note we did not ask Golden Bird to explain discrepancies between the PIERS data provided by Petitioners and the CBP data, though Golden Bird focuses on this in its rebuttal brief.¹²⁸ As Golden Bird, either directly or through its agents, reported the export information to the GACC, it would have been in the best position to provide the information necessary to explain discrepancies between what it reported to CBP, to the GACC, and to the Department. It was never asked to explain data gathered by PIERS and provided by Petitioners. Therefore, we do not find Golden Bird’s objection to Petitioners’ use of the PIERS data material to whether the amount it reported to the GACC was approximate to the amount it reported to CBP or the Department. Regardless of what may have prompted the Department to ask

¹²² See 19 CFR 351.302(b) (2011).

¹²³ See Golden Bird’s SQR Rebuttal at 4.

¹²⁴ See Golden Bird’s SQR Rebuttal at 4.

¹²⁵ See Petitioners’ Allegation Letter at 14-15.

¹²⁶ *Id.*, at Representative Certification.

¹²⁷ See Supplemental Questionnaire Letter at Attachment.

¹²⁸ See Golden Bird’s SQR Rebuttal at 5-6 and 12.

supplemental questions concerning the accuracy of Golden Bird's U.S. sales data, Golden Bird was unable to confirm the accuracy of that data.

Application of Facts Otherwise Available

As to the allegation of fraud with Golden Bird's export declarations, Petitioners request that we rely on AFA in assigning an antidumping margin to Golden Bird in these results.¹²⁹ Sections 776(a)(1) and (2) of the Act provide that the Department shall apply "facts otherwise available" if, *inter alia*, necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority" if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information if it can do so without undue difficulties.

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. For the reasons explained below, the Department determines that application of facts otherwise available is warranted and that an adverse inference is warranted, pursuant to section 776(b) of the Act.

Before applying an adverse inference, we must first determine if it is proper to use facts otherwise available.¹³⁰ We note that failure to submit requested information, in the requested form and manner, by the date specified, may result in the use of the facts available.¹³¹ The court in *Nippon Steel* characterized this as the "mere failure of a respondent to furnish requested information--for any reason--requires Commerce to resort to other sources of information to complete the factual record on which it makes its determination."¹³²

In response to the May 7, 2014, supplemental questionnaire, which identified possible deficiencies with the U.S. sales figures reported to the Department, Golden Bird submitted

¹²⁹ See Petitioners' SQR Case Brief at 20.

¹³⁰ *Zhejiang Dunan Hetian Metal Co. v. United States*, 652 F.3d 1333, 1346 (Fed. Cir. 2011); *Diamond Sawblades Mfrs. Coalition v. United States*, 35 Int'l Trade Rep. 2121 (CIT 2013).

¹³¹ 19 CFR 351.308(2)(ii).

¹³² *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1381 (Fed. Cir. 2003).

partially-completed CEDFs accounting for only a fraction of the U.S. sales it reported to the Department and to CBP, as well as other unrelated documents. By not submitting all of the requested CEDFs, Golden Bird withheld information that was requested of it, within the meaning of section 776(a)(2)(A) of the Act. Moreover, none of the CEDFs submitted contain any of the required stamps or chops that would be found on versions approved by the government of the PRC. Without these stamps or chops, the Department is unable to determine the validity of even the relatively small number of CEDFs Golden Bird did submit. Thus, in accordance with section 776(a)(2)(B) and (C) of the Act, the Department finds that Golden Bird failed to provide information in the form and manner requested, and significantly impeded the proceeding. Here, the information submitted by Golden Bird is partial information, at best. The Department requested all CEDFs and any other export related documentation to substantiate Golden Bird's initial Section A QR; Golden Bird only provided unstamped CEDFs accounting for a small fraction of its reported sales. As held by the court, the Department is not forced to accept partial information as it would allow "interested parties to manipulate the process by submitting only beneficial information..." providing respondents with "ultimate control to determine what information would be used for the margin calculation."¹³³ Consequently, the Department shall apply facts otherwise available.

In support of this finding, we agree with Petitioners that the price information contained on the partially-completed CEDFs does not match the price information Golden Bird submitted in its U.S. sales database. Golden Bird indicates that it intentionally placed the incorrect pricing information on the CEDFs because its interests were best served by reporting inaccurate information on an official declaration.¹³⁴ But, despite the mis-match between the CEDFs and the sales database and its own admissions of reporting false information to GACC, Golden Bird maintains that the quantity figures are not tainted.¹³⁵ In reviewing the sales trace that Xinboda provided at its verification, we note that the information listed on Xinboda's CEDF corresponds to the data Xinboda reported in its U.S. Sales Database.¹³⁶ Thus, there does not seem to be any indication that, in general, CEDF prices do not match U.S. sales prices (at least not for EP sales) and Golden Bird does not assert otherwise. Golden Bird's acknowledgement that it willingly reported false information to its own government bolsters our concern that it has provided inaccurate U.S. sales information to the Department. Although Golden Bird references the AMS System in its rebuttal to show the information it reported is reliable, we note the AMS System data is self-reported.¹³⁷ The AMS system relies on the accuracy of information provided to CBP by foreign producers and exporters via their U.S. importers and customers. Therefore, the Department finds that the AMS System data fails to substantiate Golden Bird's claims as that system may simply replicate any inaccuracies Golden Bird reported to CBP. All of the aforementioned reasons further support the Department's use of facts otherwise available.

¹³³ See *Steel Auth. of India v. United States*, 149 F. Supp. 2d 921, 928 (CIT 2001).

¹³⁴ See Golden Bird's SQR Rebuttal at 8 (alleging that it provided false information to the GACC in order to mislead other Chinese exporters).

¹³⁵ *Id.*

¹³⁶ See Xinboda's Verification Exhibit VII at 5.

¹³⁷ See generally *General Mar. Mgmt., LLC v. ST Shipping & Transp., Inc.*, 2004 U.S. Dist. LEXIS 10759, 3-4 (S.D.N.Y. 2004) (Noting the "information must be transmitted through the Vessel Automated Manifest System, *id.*, and must include, *inter alia*, the carrier's Standard Carrier Alpha Code, the last foreign port visited and the date departed, the date the vessel is scheduled to arrive at the first United States port, and information concerning the quantity and classification of cargo, the port where it was loaded, the identity of the shipper and consignee.").

Section 782(d) of the Act requires that the Department provide parties with an opportunity to correct deficient responses. Here, the Department allowed Golden Bird to provide documentation to support what appeared to be a deficient section A response. As discussed above, the documents that Golden Bird provided (*i.e.*, the CEDFs) after it was given a chance to remedy its deficient section A response were themselves deficient and partial at best. Golden Bird therefore failed to remedy the issue. Instead, Golden Bird relied on its explanation that it required more time to submit the documents. We note that Golden Bird was given 16 days to submit its SQR, which is, in fact, more than the time a company is normally given when an on-site verification is conducted. When a verification is conducted, a respondent typically receives seven days to prepare the requested documents. These documents would likely be requested by the Department (as noted above, a request for “export licenses” is part of the standard verification agenda, such as the one issued to Xinboda in this review). Had we verified Golden Bird, it would have likely needed to produce export licenses or some reasonable substitute within those seven days. Consequently, we continue to find that 16 days to respond is more than a reasonable amount of time, in particular, when the response concerns documents the interested party is required to maintain (by the Department and, apparently, its own government) and naturally would have maintained given its participation in this and previous antidumping reviews.

The Department further finds, in accordance with Section 776(b) of the Act, Golden Bird failed to cooperate by not acting to the best of its ability to comply with our request for information. This standard requires a respondent to do the “maximum it is able to do.”¹³⁸ In making this determination, we consider the extent to which a respondent may benefit from its own lack of cooperation.¹³⁹ Also, we assess the extent of respondent's abilities, efforts, and cooperation, in responding to our supplemental questionnaire.¹⁴⁰ There is no intent element and mere insufficient attention to statutory obligations suffices for adverse treatment.¹⁴¹ The standard “does not condone inattentiveness, carelessness, or inadequate record keeping.”¹⁴²

In making this determination, we utilize a two-part test.¹⁴³ In the first part, we “make an objective showing that a reasonable and responsible importer would have known that the requested information was required to be kept and maintained under the applicable statutes, rules, and regulations.”¹⁴⁴ In our proceedings, respondents are expected to be familiar with the rules and regulations that apply to them.¹⁴⁵ Consistent with our past practice, we continue to find that it is not unreasonable to presume that an exporter will be familiar with the regulations applicable to it.¹⁴⁶ To be sure, in its Section A QR, Golden Bird attested to “obeying the laws and administrative regulations of the government.”¹⁴⁷

¹³⁸ *Nippon Steel*, 337 F.3d at 1382.

¹³⁹ *Gourmet Equip.*, 24 C.I.T. at 577.

¹⁴⁰ *Nippon Steel*, 337 F.3d at 1382.

¹⁴¹ *Id.* at 1378-1379 and 1382-1383.

¹⁴² *Id.* at 1382.

¹⁴³ *Id.* at 1382-1383.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 1382.

¹⁴⁶ See generally *Tissue Paper Products from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 76 FR 47551, 47553 (August 5, 2011) (noting that the respondent

In the second prong, we “make a subjective showing that the respondent under investigation not only has failed to promptly produce the requested information, but further that the failure to fully respond is the result of the respondent's lack of cooperation in either: (a) failing to keep and maintain all required records, or (b) failing to put forth its maximum efforts to investigate and obtain the requested information from its records.”¹⁴⁸ Here, we find it reasonable to expect that a more forthcoming response should have been made. In its SQR, Golden Bird offered several scenarios in an attempt to explain the absence of the CEDFs.¹⁴⁹ For the reasons below, we find these unconvincing.

In its SQR, as one of the reasons for not being able to produce the requested documents, Golden Bird alleges that it used multiple export agents. As a consequence, Golden Bird explains it may not have been able to contact all of the export agents in order to retrieve all the CEDFs, or, alternatively, that the export agents simply may not have forwarded the forms to Golden Bird.¹⁵⁰ In contrast to Golden Bird’s explanation, the Bill of Ladings submitted by Golden Bird with its SQR, list the same export agent.¹⁵¹ Additionally, on all of the submitted CEDFs, the space for listing the export agent is blank.¹⁵² Given these documents either show the same export agent or no export agent at all, combined with the formalities that the GACC requires in the export agent and exporter relationship - including, power of attorney documents and pre-certification - Golden Bird’s explanations remain questionable.¹⁵³ Moreover, the PRC customs regulations require exporters to maintain the completed CEDFs for three years.¹⁵⁴ In its Section A QR, Golden Bird certified that it “conducts export activities according to the *Foreign Trade Law of the PRC, The Company Law of the PRC and Regulation of the PRC on the Administration of Company Registration.*”¹⁵⁵ Golden Bird does not dispute that these laws are applicable to it.¹⁵⁶ Here, it seems Golden Bird has failed to abide by its home country’s laws. Finally, the Department notes that Golden Bird did not submit any factual information to substantiate its claim of multiple export agents, such as the power of attorney letters required by the GACC when an export agent acts on behalf of an exporter¹⁵⁷ or any type of accounting document showing that it paid multiple agents. Thus, these claims cannot be considered anything more than speculation.

“was expected to maintain the requested production and accounting records in the normal course of business and was required to maintain them under Vietnamese accounting law, but did not do so.”) (Tissue Paper).

¹⁴⁷ Golden Bird’s Section A QR at A-2.

¹⁴⁸ *Nippon Steel*, 337 F.3d at 1382-83.

¹⁴⁹ Golden Bird SQR at 3-4 and 7.

¹⁵⁰ *Id.*, at 3.

¹⁵¹ *Id.* at Exhibit 5.

¹⁵² *See, e.g., id.*, at Attachment 3.

¹⁵³ Letter from Petitioners, “18th Administrative Review of Fresh Garlic from the People’s Republic of China – Petitioners’ Rebuttal New Factual Information Responding to Golden Bird’s May 23, 2014 Supplemental Questionnaire Response” (June 2, 2014) (Petitioners’ SQR Rebuttal) at Attachments 1-4.

¹⁵⁴ *Id.*

¹⁵⁵ Golden Bird’s Section A QR at A-4.

¹⁵⁶ *See generally* Rebuttal to Petitioners’ Supplemental Brief Regarding Golden Bird (June 12, 2014) (Golden Bird SQR Rebuttal) at 6 (stating merely that “Golden Bird was denied a meaningful opportunity to confirm whether the Chinese regulations Petitioners cite, and particularly the administrative procedures, were modified in view of changes to China’s VAT refunds.”).

¹⁵⁷ Petitioners’ SQR Rebuttal at Attachments 1-4.

In the alternative, Golden Bird offers that it might not have kept all of the requested documents, because of a change in the VAT tax exemption in January of 2012.¹⁵⁸ We find this unconvincing, because it is contradicted by substantial record evidence. First, as noted above, the GACC regulations require exporters to maintain the completed export declaration forms for three years.¹⁵⁹ These regulations are unconnected and unrelated to any VAT tax exemption. Golden Bird even attested that these laws were applicable to it.¹⁶⁰ Although Golden Bird provides a translation of a notice from the Ministry of Finance from the PRC concerning the VAT exemption, we note that this is in the context of “wholesale” and “retail” sales of vegetables in general, and speaks nothing of export document requirements or, for that matter, of any document requirements.¹⁶¹ Second, we note that the CEDFs that Golden Bird did submit were all from dates after January of 2012.¹⁶² Given these two facts, the record evidence establishes that Golden Bird was required to keep the CEDFs on file for three years, and that it did, in fact, keep at least some of the partially completed forms even after the January VAT change. Therefore, Golden Bird’s explanation, that it might not have kept the forms as a result of a change in the VAT exemption, is unconvincing.

Golden Bird also argues that, as a result of time constraints, from the time Petitioners’ filed their case brief until Golden Bird could file its rebuttal, Golden Bird was not afforded enough time to research whether the GACC regulations were modified.¹⁶³ Indeed, in its third extension request, Golden Bird contends that the briefing schedule set for this issue was unreasonably short.¹⁶⁴ We note, however, that Petitioners raised the GACC regulations in their April 7, 2014, allegation, and Golden Bird cited to these GACC regulations in its April 16, 2014, response.¹⁶⁵ We also note that, in its SQR, Golden Bird is the interested party that injected the issue of the VAT exemption.¹⁶⁶ Thus, it is not unreasonable to presume that Golden Bird was on notice of the relevance of the GACC regulations, and their relation to the VAT tax, well before the time to file the case brief or the rebuttal brief for this issue. We also note that Golden Bird opted not to file a case brief for this issue. Thus, we are left with, on the one hand, having record evidence establishing that Golden Bird is required to keep the CEDFs on file for three years, and, on the other hand, Golden Bird’s unsubstantiated claim that the CEDFs are somehow related to filing the VAT tax.

In the alternative, Golden Bird offers that, perhaps, it did not retain more of the requested documents as a result of a lack of office space.¹⁶⁷ But, we note that the regulations of the GACC allow an exporter to maintain electronic versions of the forms, in place of hard copies.¹⁶⁸ This, when taken together with the fact that Golden Bird was required to maintain the forms, and was

¹⁵⁸ Golden Bird SQR at 7.

¹⁵⁹ Petitioners’ SQR Rebuttal at Attachments 1-4.

¹⁶⁰ Golden Bird’s Section A QR at A-4.

¹⁶¹ Golden Bird SQR at Attachment 7.

¹⁶² *See, e.g., id.* at Attachment 3 and 5.

¹⁶³ *See* Golden Bird SQR Rebuttal at 6.

¹⁶⁴ *See* Letter from Golden Bird, “Fresh Garlic from the People’s Republic of China – Request for Extension of Time to File Separate Case and Rebuttal Briefs in the 18th Administrative Review of Fresh Garlic From China Filed on Behalf of Hebei Golden Bird Trading Co., Ltd.” (May 28, 2014) at 2.

¹⁶⁵ *See* Petitioners’ Substantial Discrepancies Letter at 8; Golden Bird Comments on Petitioners’ Allegations at 7.

¹⁶⁶ Golden Bird SQR at 7.

¹⁶⁷ *Id.* at question 2.

¹⁶⁸ Petitioners’ SQR Rebuttal at Attachments 1-4.

able to produce documents from multiple months of the POR, including invoices, bill of ladings, and payment vouchers, for all payments received in October of 2012, and partially completed CEDFs for a portion of the POR,¹⁶⁹ all of which were retained in spite of this space concern, render the concern over space unpersuasive. Golden Bird has not offered an explanation for why, if it could not maintain hardcopies, it did not retain electronic versions of the documents it was otherwise required to keep.

Notwithstanding the above concerns, Golden Bird speculates that given more time, perhaps it could produce more forms. But, this is mere speculation. Leading up to its SQR, Golden Bird was not consistent in its reasons for needing more time to respond to our request; nor did the various reasons given in the extension requests match the reasons in Golden Bird's SQR. We believe it reasonable to presume, by the time of its second request for an extension, Golden Bird should have known the precise reason the documents were unavailable.¹⁷⁰ The reason Golden Bird gave for needing more time in its May 8, 2014, extension request, related to the amount of material requested, translating the material, work schedules, and preparing a questionnaire in the subsequent 19th AR of garlic.¹⁷¹ In contrast, in its May 16, 2014, extension request, counsel for Golden Bird noted that the company forwarded the requested documents to the firm, and that more were forthcoming.¹⁷² Here, the reasons given for needing more time were related to translating the documents and answering the second and third questions of the supplemental questionnaire.¹⁷³ We note that, in the May 16 request, there was no mention of multiple agents nor of difficulty in locating documents. Instead, Golden Bird indicated that documents were produced and more were forthcoming. The concerns over multiple export agents was not raised until Golden Bird filed its SQR. For the above reasons, we remain unconvinced that allowing Golden Bird more time to substantiate its Section A QR would result in the production of the requisite documents.

Merely stating multiple possibilities for why these specific requested documents are unavailable does not satisfy the substantial evidence standard. It is well established that substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."¹⁷⁴ It must be "more than a scintilla, and must do more than create a suspicion of the existence of the fact to be established."¹⁷⁵ Golden Bird only speculates as to why it cannot produce the documents it apparently is required to keep under the customs regulations of the GACC, without any record evidence to support its claims. We must rely on substantial evidence

¹⁶⁹ See, e.g., Golden Bird SQR Attachment 3 and 5.

¹⁷⁰ See generally *Nippon Steel* 337 F.3d at 1383 (noting "In preparing a response to an inquiry from Commerce, it is presumed that respondents are familiar with their own records.").

¹⁷¹ See Letter from Golden Bird, "Fresh Garlic from the People's Republic of China – Request for Extension of Time to Respond to the Department's May 7, 2014, Supplemental Questionnaire on behalf of Hebei Golden Bird Trading Co., Ltd." (May 8, 2014) at 3.

¹⁷² See Letter from Golden Bird, "Fresh Garlic from the People's Republic of China – Request for Extension of to Respond to Department's Supplemental Questionnaire in the 18th Administrative Review of Fresh Garlic from China Filed on Behalf of Hebei Golden Bird Trading Co., Ltd." (May 16, 2014) at 2.

¹⁷³ *Id.*

¹⁷⁴ *Universal Camera Corp. v. N.L.R.B.*, 340 U.S. 474, 477 (1951) (quoting *Consol. Edison Co. of New York v. N.L.R.B.*, 305 U.S. 197, 229 (1938)).

¹⁷⁵ *N.L.R.B. v. Columbian Enameling & Stamping Co.*, 306 U.S. 292, 300 (1939).

in our findings and not speculation.¹⁷⁶ The burden of building the factual record of the proceeding rests with the interested parties.¹⁷⁷

As noted above, in the supplemental questionnaire we simply asked for documents that Golden Bird is required to keep under the laws of the PRC - and would reasonably be expected to keep - for the period that Golden Bird was being reviewed for. As another indication of its failure to cooperate with our request for information, we note that we granted Golden Bird two-extensions to submit its SQR.¹⁷⁸ Nevertheless, Golden Bird's SQR was deficient. As discussed above, Golden Bird's reasoning for failing to produce the requested documents was merely speculation on its part. We note, despite its speculation, that Golden Bird had the ability to produce verifiable information in the time allotted, because Golden Bird was apparently required to maintain these documents in either paper or electronic form, but failed to do so. We also note, more broadly, that if Petitioners' allegation is true, Golden Bird was involved in a scheme to circumvent millions of dollars in customs duties. By failing to provide a complete response to our questionnaire, and, instead, submitting some, invalid export declarations, which contain information Golden Bird acknowledges is false, with mere speculation as to why the complete declarations are unavailable, despite being legally obligated to submit accurate declarations and to maintain them for three years, we find that Golden Bird not only exhibited behavior below the standard for a reasonable respondent, but, also, failed to act to the best of its ability in responding to our supplemental questionnaire.¹⁷⁹

Furthermore, Golden Bird was selected as a mandatory respondent based upon the volume of exports it declared to CBP. Had it only declared the amount it attempted to substantiate in its SQR, or the amount in the PIERS data, Golden Bird would not have been selected as a mandatory respondent. Section A requests general information about the company including the quantity and value of sales, separate rate eligibility, corporate structure and affiliations, sales process, accounting/financial practices, merchandise, and exports through intermediate countries. In the end, Golden Bird was unable to substantiate its Section A submissions. Because Golden Bird's Section A response and supplemental Section A questionnaire are the very documents in which material misrepresentations have been revealed we cannot rely on Golden Bird's submitted Section A responses. For the aforementioned reasons, the Department finds that Golden Bird failed to provide information in a requested manner or form, failed to provide

¹⁷⁶ See generally *Home Meridian Int'l, Inc. v. United States*, 922 F. Supp. 2d 1366, 1382 (CIT 2013) (noting that "Commerce's finding that the statement was reliable was not based on substantial evidence but rather speculation as to why the apparent deficiency is neither real nor important, and its selection was contrary to Commerce's practice.").

¹⁷⁷ See *QVD Food Co. v. United States*, 658 F.3d 1318, 1324 (Fed. Cir. 2011).

¹⁷⁸ See First Extension Grant Letter at 1 and Second Extension Grant Letter at 2.

¹⁷⁹ See generally *Tissue Paper at 47553* (noting that the respondent "was expected to maintain the requested production and accounting records in the normal course of business and was required to maintain them under Vietnamese accounting law, but did not do so."); Memorandum from Stephen J. Claeys, Deputy Assistant Secretary, to David M. Spooner, Assistant Secretary, "Issues and Decision Memorandum: Final Results of Administrative Review" (July 7, 2008) at 9; *Nippon Steel* 337 F.3d at 1383; *Gourmet Equip* 24 C.I.T. at 579 (noting "Although Gourmet responded to Commerce's questionnaires, it did not provide the kind of information Commerce required to verify the questionnaire responses. In light of the fact that it was within Gourmet's capacity to provide the right kind of information, Commerce's determination that Gourmet failed to comply to the best of its ability is in accordance with law and supported by substantial evidence.").

information that was verifiable, and failed to cooperate to the best of its ability in producing such evidence.

Application of Total AFA

Finally, in applying AFA, if the Department finds that the response to a request for information fails to comply with the request and the submitting party fails to remedy the deficiency, the Department may disregard all of the original and subsequent responses.¹⁸⁰ Here, as discussed above, it was not practicable to send further deficiency questionnaires to the parties because of time constraints in light of the time limits established for the completion of this review. Golden Bird had ample time to explain or remedy its deficiencies in the supplemental questionnaire. But Golden Bird failed to do so. Moreover, in accordance with section 782(e) of the Act, the Department determined it could not consider the information provided by Golden Bird because the information could not be verified, the information was so incomplete it could not serve as a reliable basis for reaching the applicable determination, and Golden Bird did not demonstrate it acted to the best of its abilities in supplying this information.¹⁸¹ Because we determine that the entirety of Golden Bird's information is unusable, including its separate rate information, we find that Golden Bird has not demonstrated its eligibility for separate rate status. As a result, for purposes of these final results, we are treating Golden Bird as part of the PRC-wide entity. Because the PRC-wide entity, which includes Golden Bird, failed to cooperate to the best of its ability by withholding necessary information, application of adverse facts available, pursuant to section 776(b) of the Act, is also warranted and we are applying the rate of \$4.71 to the PRC-wide Entity.¹⁸²

Comment 17: Hejia Ministerial Error, Certification of No Shipments

Hejia:

- The Department, through ministerial error, did not recognize Hejia's certification of no shipments.

Department's Position: Hejia's no shipments certification was manually submitted and inadvertently attached to Yuanxin's no shipment certification. We note that Hejia's submission was timely filed. Based on the certifications filed by Hejia and our analysis of CBP information, we determine that Hejia did not have any reviewable transactions during the POR.

Comment 18: Separate Rate Request for Goodman

Petitioners:

- The Department lacks jurisdiction to grant Goodman a separate rate in this AR because the Department was divested of jurisdiction over the issue when Goodman filed its appeal of the NSR.
- Goodman did not complete a bona fide transaction during the POR.

¹⁸⁰ See section 782(d) of the Act.

¹⁸¹ Section 782(e)(2)-(4) of the Act.

¹⁸² See *Zhejiang Dunan Hetian Metal Co. v. United States*, 652 F.3d 1333, 1348 (Fed. Cir. 2011) (holding that the Department may use total AFA when the "submitted data exhibited pervasive and persistent deficiencies that cut across all aspects of the data," making the reported data unreliable or unusable).

- Because Goodman received an unfavorable determination during the NSR and the NSR is concurrent with the AR, Goodman is not entitled to a separate rate here.
- Goodman failed to cite any administrative authority for awarding a respondent a separate rate where its sales that are the basis for its claim to a separate rate have been found non-bona fide in another segment of the POR.
- Goodman is merely trying to have a second bite at the apple after having an unfavorable NSR determination.

Goodman:

Goodman is entitled to its own separate rate for the following reasons:

- Goodman provided all of the information in the Goodman NSR necessary for the Department to calculate a margin;
- Goodman has challenged in court the Department's determination that Goodman's sales were not *bona fide*;
- Goodman has not challenged in court any aspect that conflicts with the Department's ability to determine that Goodman is entitled to a separate rate;
- The periods of review for the Goodman NSR and this administrative review overlap;
- Goodman is both *de facto* and *de jure* separate from the PRC;
- The separate rate issue was not addressed in NSR;
- Goodman's sales are within the scope of the antidumping duty order on fresh garlic from the PRC;
- The Department has already calculated Goodman's margin in the preliminary results of its NSR; therefore, the Department's administrative burden is minimal.

Department's Position: Goodman timely submitted a separate rate application; however, the Department stated in the *Preliminary Results* that Goodman will not be analyzed for the purposes of a separate rate in this review but will maintain the rate it receives from its NSR concurrent with this administrative review.¹⁸³

In the preliminary results of the Goodman NSR, the Department determined that Goodman qualified as an NSR.¹⁸⁴ However, in the final results, the Department determined that Goodman's sales were not *bona fide* and therefore rescinded the NSR.¹⁸⁵ We determined that its sales were not *bona fide* because the information on the record showed that the reported sales were not commercially reasonable and were not reflective of normal business practices.¹⁸⁶ Therefore, Goodman did not have any reviewable sales during the POR. Because Goodman did

¹⁸³ See *Preliminary Results*, and accompanying Issues and Decision Memorandum at 3.

¹⁸⁴ See *Honey from the People's Republic of China: Final Rescission of Antidumping Duty Administrative Review*, 77 FR 34343 (June 11, 2012); *Certain Forged Stainless Steel Flanges from India: Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind Administrative Review in Part*, 73 FR 11863 (March 5, 2008).

¹⁸⁵ See Memorandum from Gene Calvert, Acting Program Manager, to Edward C. Yang, Director Office VII, "New Shipper Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Final Analysis of Shijiazhuang Goodman Trading Co., Ltd." (April 3, 2014) (Goodman NSR Final Analysis Memorandum); see also *Fresh Garlic From the People's Republic of China: Final Rescission of Antidumping Duty New Shipper Review of Shijiazhuang Goodman Trading Co., Ltd.* 79 FR 22098 (April 21, 2014) (*Goodman NSR Rescission*).

¹⁸⁶ See Goodman NSR Final Analysis Memorandum.

not have any reviewable sales, it cannot qualify for a separate rate; the Department does not assign a cash deposit rate to an entity in advance of that entity having a reviewable sale.¹⁸⁷ Consequently, without any reviewable sales, the Department is rescinding the review with regard to Goodman. Any entries entered during this POR shall liquidate as entered.¹⁸⁸

Comment 19: Weighted Average Margin Calculation for Goodman

Goodman:

- Goodman argues that it is entitled to its own weighted average margin; calculating it places a minimal burden on the Department, because:
 - All the information necessary to calculate the weighted average margin is in the NSR;
 - The NSR and the POR of this administrative review are contemporaneous.

Department's Position: As discussed above in Comment 18, Goodman requested an NSR, and the Department found that the sales were not *bona fide* in its NSR.¹⁸⁹ Thus, the Department has determined to rescind the review with regard to Goodman. This issue is therefore moot.

Comment 20: Contemporaneous Calculation of SVs for Goodman

Goodman:

- Goodman argues that the Department should use the month corresponding to Goodman's export price to calculate the SVs for normal value, because prices for agricultural products vary.
- In the alternative to using the month corresponding to Goodman's EP to calculate the SVs, Goodman argues the Department should select the average 6-month period price corresponding to Goodman's sales and the bi-annual NSR period for filing requests, because, when Goodman filed its NSR, it used the new shipper POR.

Department's Position: As discussed above in Comment 18, Goodman requested an NSR, and the Department found that the sales were not *bona fide* in its NSR.¹⁹⁰ Thus, the Department determines to rescind the review with regard to Goodman. This issue is therefore moot.

Comment 21: Separate Briefing Schedule for Golden Bird's SQR

Petitioners:

- Department should allow another briefing schedule for the SQR from Golden Bird.

¹⁸⁷ See *Goodman NSR Rescission*.

¹⁸⁸ Goodman is currently involved in pending litigation concerning these entries. See *Shijiazhuang Goodman Trading Co. v. United States*, CIT No. 14-00101. Goodman's entries are currently covered under a preliminary injunction in connection with this litigation. Therefore, these entries shall not be liquidated until the preliminary injunction is lifted.

¹⁸⁹ *Id.* at 5.

¹⁹⁰ See *Goodman NSR Final Analysis Memorandum* at 5.

Department's Position: As noted above in the Background section, the Department set a separate briefing schedule for Golden Bird's response.

RECOMMENDATION

We recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of this administrative review in the *Federal Register*.



Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

23 JUNE 2014

(Date)

Appendix – List of Companies

APPENDIX

Companies That Have Certified No Shipments

1. Jinxiang Chengda Imp. & Exp. Co., Ltd.
2. Foshan Fuyi Food Co., Ltd.
3. Heze Ever-Best International Trade Co., Ltd.
4. Zhengzhou Huachao Industrial, Co., Ltd.
5. Qingdao Maycarrier Import & Export Co., Ltd.
6. Jinxiang Merry Vegetable Co., Ltd.
7. Cangshan Qingshui Vegetable Foods Co., Ltd.
8. Qingdao Tiantaixing Foods Co., Ltd.
9. Qingdao Sea-line International Trading Co.
10. XuZhou Simple Garlic Industry Co., Ltd.
11. Jining Yongjia Trade Co. Ltd.
12. Jinxiang Yuanxin Imp. & Exp. Co., Ltd.
13. Shandong Jinxiang Zhengyang Import & Export Co. Ltd.
14. Jinxiang Hejia Co., Ltd.

Companies Subject to the PRC-Wide Rate

1. American Pioneer Shipping
2. Anhui Dongqian Foods Ltd.
3. Anqiu Friend Food Co., Ltd.
4. Anqiu Haoshun Trade Co., Ltd.
5. APM Global Logistics (Shanghai) Co., Ltd.
6. APS Qingdao
7. Chiping Shengkang Foodstuff Co., Ltd.
8. CMEC Engineering Machinery Import & Export Co., Ltd.
9. Dongying Shunyifa Chemical Co., Ltd.
10. Dynalink Systems Logistics (Qingdao) Inc.
11. Eimskip Logistics Inc.
12. Feicheng Acid Chemicals Co., Ltd.
13. Frog World Co., Ltd.
14. Golden Bridge International, Inc.
15. Guangxi Lin Si Fu Bang Trade Co., Ltd
16. Hangzhou Guanyu Foods Co., Ltd.
17. Hebei Golden Bird Trading Co., Ltd.
18. Henan Weite Industrial Co., Ltd.
19. Hongqiao International Logistics Co.
20. Intecs Logistics Service Co., Ltd.
21. IT Logistics Qingdao Branch
22. Jinan Solar Summit International Co., Ltd.
23. Jinan Yipin Corporation Ltd.
24. Jining De-Rain Trading Co., Ltd.

25. Jining Highton Trading Co., Ltd.
26. Jining Jiulong International Trading Co., Ltd.
27. Jining Tiankuang Trade Co., Ltd.
28. Jining Trans-High Trading Co., Ltd.
29. Jinxiang County Huaguang Food Import & Export Co., Ltd.
30. Jinxiang Dacheng Food Co., Ltd.
31. Jinxiang Dongyun Freezing Storage Co., Ltd. (a/k/a Jinxiang Eastward Shipping Import and Export Limited Company)
32. Jinxiang Dongyun Import & Export Co., Ltd.
33. Jinxiang Fengsheng Import & Export Co., Ltd.
34. Jinxiang Grand Agricultural Co., Ltd.
35. Jinxiang Infarm Fruits & Vegetables Co., Ltd.
36. Jinxiang Meihua Garlic Produce Co., Ltd.
37. Jinxiang Shanyang Freezing Storage Co., Ltd.
38. Jinxiang Shenglong Trade Co., Ltd.
39. Jinxiang Tianheng Trade Co., Ltd.
40. Jinxiang Tianma Freezing Storage Co., Ltd.
41. Jinxiang Xian Baishite Trade Co., Ltd. (a/ k/a Jinxiang Best Trade Co., Ltd.)
42. Juye Homestead Fruits and Vegetables Co., Ltd.
43. Kingwin Industrial Co., Ltd.
44. Laiwu Fukai Foodstuff Co., Ltd.
45. Laizhou Xubin Fruits and Vegetables
46. Linshu Dading Private Agricultural Products Co., Ltd.
47. Linyi City Hedong District Jiuli Foodstuff Co.
48. Linyi City Kangfa Foodstuff Drinkable Co., Ltd.
49. Linyi Katayama Foodstuffs Co., Ltd.
50. Linyi Tianqin Foodstuff Co., Ltd.
51. Ningjin Ruifeng Foodstuff Co., Ltd.
52. Qingdao Apex Shipping Co., Ltd.
53. Qingdao BNP Co., Ltd.
54. Qingdao Cherry Leather Garment Co., Ltd.
55. Qingdao Chongzhi International Transportation Co., Ltd.
56. Qingdao Everfresh Trading Co., Ltd.
57. Qingdao Liang He International Trade Co., Ltd
58. Qingdao Lianghe International Trade Co., Ltd.
59. Qingdao Saturn International Trade Co., Ltd.
60. Qingdao Sino-World International Trading Co., Ltd.
61. Qingdao Winner Foods Co., Ltd.
62. Qingdao XinTian Feng Food Co., Ltd.
63. Qingdao Yuankang International
64. Qufu Dongbao Import & Export Trade Co., Ltd.
65. Rizhao Huasai Foodstuff Co., Ltd.
66. Samyoung America (Shanghai) Inc.
67. Shandong Chengshun Farm Produce Trading Co., Ltd.
68. Shandong Chenhe Intl Trading Co., Ltd.
69. Shandong China Bridge Imports
70. Shandong Dongsheng Eastsun Foods Co., Ltd.
71. Shandong Garlic Company

72. Shandong Longtai Fruits and Vegetables Co., Ltd.
73. Shandong Sanxing Food Co., Ltd.
74. Shandong Wonderland Organic Food Co., Ltd.
75. Shandong Xingda Foodstuffs Group Co., Ltd.
76. Shandong Yipin Agro (Group) Co., Ltd.
77. Shanghai Ever Rich Trade Company
78. Shanghai Goldenbridge International Co., Ltd.
79. Shanghai Great Harvest International Co., Ltd.
80. Shanghai LJ International Trading Co., Ltd.
81. Shanghai Medicines & Health Products Import/Export Co., Ltd.
82. Shanghai Yijia International Transportation Co., Ltd.
83. Shenzhen Fanhui Import & Export Co., Ltd.
84. Shenzhen Greening Trading Co., Ltd.
85. Shenzhen Xunong Trade Co., Ltd.
86. Shijiazhuang Goodman Trading Co., Ltd.
87. Sunny Import & Export Limited
88. T&S International, LLC.
89. Taian Eastsun Foods Co., Ltd.
90. Taian Fook Huat Tong Kee Pte. Ltd.
91. Taian Solar Summit Food Co., Ltd.
92. Taiyan Ziyang Food Co., Ltd.
93. Tianjin Spiceshi Co., Ltd.
94. U.S. United Logistics (Ningbo) Inc.
95. V.T. Impex (Shandong) Limited
96. Weifang Chenglong Import & Export Co., Ltd.
97. Weifang He Lu Food Import & Export Co., Ltd.
98. Weifang Hong Qiao International Logistics Co., Ltd.
99. Weifang Jinbao Agricultural Equipment Co., Ltd.
100. Weifang Naike Foodstuffs Co., Ltd.
101. Weifang Shennong Foodstuff Co., Ltd.
102. Weihai Textile Group Import & Export Co., Ltd.
103. WSSF Corporation (Weifang)
104. Xiamen Huamin Import Export Company
105. Xiamen Keep Top Imp. and Exp. Co., Ltd.
106. Xinjiang Top Agricultural Products Co., Ltd.
107. XuZhou Heiners Agricultural Co., Ltd.
108. Yishui Hengshun Food Co., Ltd.
109. You Shi Li International Trading Co., Ltd.
110. Zhangzhou Xiangcheng Rainbow Greenland Food Co., Ltd.
111. Zhengzhou Dadi Garlic Industry Co., Ltd.
112. Zhengzhou Xiwannian Food Co., Ltd.
113. Zhengzhou Xuri Import & Export Co., Ltd.
114. Zhengzhou Yuanli Trading Co., Ltd.
115. Zhong Lian Farming Product (Qingdao) Co., Ltd.