



A-570-831

**Public Document**

Administrative Review

11/01/2013 – 10/31/14

E&C/Office VII: JA/AC/TP

November 30, 2015

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

FROM: Gary Taverman *ST*  
Associate Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results of the 2013-  
2014 Antidumping Duty Administrative Review: Fresh Garlic  
from the People's Republic of China

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## I. SUMMARY

In response to a request from interested parties, the Department of Commerce (Department) is conducting an administrative review (AR) of the antidumping duty (AD) order on fresh garlic from the People's Republic of China (PRC) covering the period of review (POR) of November 1, 2013, through October 31, 2014. We preliminarily find that mandatory respondent Shenzhen Xinboda Industrial Co., Ltd. (Xinboda) made sales of subject merchandise at less than normal value (NV). In addition, the Department preliminarily finds that the other mandatory respondents, Hebei Golden Bird Trading Co., Ltd. (Golden Bird) and Qingdao Tiantaixing Foods Co., Ltd. (QTF), are part of the PRC-wide entity and will receive the rate of that entity, which is not under review. We are also preliminarily granting separate rates to 12 companies which demonstrated eligibility for separate rate status, but were not selected for individual examination. The rates assigned to each of these companies can be found in the "Preliminary Results of Review" section of the accompanying preliminary results *Federal Register* notice. Finally, the Department also preliminarily determines that 10 companies made no shipments.

If these preliminary results are adopted in our final results of review, the Department will instruct U.S. Customs and Border Protection (CBP) to assess AD duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. We intend to issue final results no later than 120 days from the date of publication of this notice pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).



## II. BACKGROUND

On November 16, 1994, the Department published the AD duty order on fresh garlic from the PRC.<sup>1</sup> On November 3, 2014, the Department published a notice of opportunity to request an AR of the AD duty order on fresh garlic from the PRC for the POR November 1, 2013, through October 31, 2014.<sup>2</sup> Between November 26 and December 1, 2014, Petitioners<sup>3</sup> and twenty-three other interested parties requested an AR.<sup>4</sup> On December 23, 2014, the Department initiated this review for 161 producers/exporters.<sup>5</sup> Between January 16 and March 2, 2015 all relevant review requests for 81 companies were timely withdrawn.<sup>6</sup> On August 2, 2015, the Department extended the deadline of these preliminary results to November 30, 2015.<sup>7</sup>

Ten parties timely submitted “no shipment” certifications, attesting they had no entries of subject merchandise during the POR. Specifically, these companies are: (1) Qingdao Sea-line International Trading Co.; (2) Qingdao Xintianfeng Foods Co., Ltd.; (3) Jining Yifa Garlic Produce Co., Ltd.; (4) Shijazhuang Goodman Trading Co., Ltd.; (5) Qingdao Lianghe International Trade Co., Ltd.; (6) Shandong Chenhe International Trading Co., Ltd.; (7) Jinxiang Richfar Fruits & Vegetables Co., Ltd.;<sup>8</sup> (8) Jinxiang Yuanxin Import & Export Co., Ltd.;<sup>9</sup> (9)

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

<sup>2</sup> See *Antidumping or Countervailing Duty Order, Finding, Or Suspended Investigation; Opportunity To Request Administrative Review*, 79 FR 65176 (November 3, 2014).

<sup>3</sup> See Petitioners’ letter, “20th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China – Petitioners’ Requests for Administrative Reviews,” (December 1, 2014). Petitioners consist of the Fresh Garlic Producers Association and its individual members: Christopher Ranch L.L.C., The Garlic Company, Valley Garlic, and Vessey and Company, Inc.

<sup>4</sup> See Hejia and Jinxiang Feiteng’s filing, “Fresh Garlic from the People’s Republic of China – Request for Review,” (November 26, 2014); Xinboda’s filing, “Fresh Garlic from the People’s Republic of China – Request for Review,” (November 26, 2014); El Bosque Garlic Farm’s filing, “Fresh Garlic from the People’s Republic of China – Request for Antidumping Administrative Review of Zhengzhou Harmoni Spice Co., Ltd. and Jinxiang Jinma Fruits and Vegetables Products Co., Ltd. for the 20<sup>th</sup> Period of Review (11/01/2013-10/31/2014),” (November 28, 2014); Golden Bird *et al* filing, “Fresh Garlic from the People’s Republic of China – Request for Antidumping Administrative Review for the 20<sup>th</sup> Period of Review (11/01/2013 – 10/31/2014) on Behalf of Requestors,” (November 28, 2014); Zhengzhou Harmoni Spice Co., Ltd.’s (Harmoni) letter, “Request for Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China,” (December 1, 2014).

<sup>5</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 79 FR 76956 (December 23, 2014) (*Initiation Notice*).

<sup>6</sup> See Harmoni’s submission, “Harmoni’s Withdrawal of Review Request: Twentieth Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China (A-570-831),” (January 16, 2015); see El Bosque’s submission, “Fresh Garlic from the People’s Republic of China – Withdrawal of Review Request in 20<sup>th</sup> Administrative Review Filed on behalf of El Bosque Garlic Farm,” (March 17, 2015).

<sup>7</sup> See Memorandum to the File, “Fresh Garlic from the People’s Republic of China –20th Administrative Review (2013-2014),” (August 7, 2015).

<sup>8</sup> See Qingdao Sea-line *et al*’s submission, “Fresh Garlic from the People’s Republic of China – No Sales Statements in Connection with the Garlic 20 (2013-2014) Administrative Review,” (February 2, 2015).

<sup>9</sup> See Jinxiang Yaunxin’s submission, “Fresh Garlic from the People’s Republic of China – Entry of Appearance and Certificate of No Sales,” (January 13, 2015).

Shandong Jinxiang Zhengyang Import & Export Co., Ltd.;<sup>10</sup> and (10) Lanling Qingshui Vegetable Foods Co., Ltd.<sup>11</sup>

Sixteen companies timely submitted separate rate status certifications or applications. Those companies are: (1) Jinxiang Hejia Co., Ltd. (Hejia); (2) Weifang Hongqiao International Logistics Co., Ltd. (Hongqiao); (3) QTF; (4) Yantai Jinyan Trading, Inc. (Yantai); (5) Shenzhen Bainong Co., Ltd. (Bainong); (6) Jinxian Feiteng Import & Export Co., Ltd. (Feiteng); (7) Jinan Farmlady Trading Co., Ltd. (Farmlady); (8) Jining Yongjia Trade Co., Ltd. (Yongjia); (9) Jining Shunchang Import & Export Co., Ltd. (Shunchang); (10) Jining Maycarrier Import & Export Co., Ltd. (Maycarrier); (11) Shenzhen Yuting Foodstuff Co., Ltd. (Yuting); (12) Jinxiang Guihua Food Co., Ltd. (Guihua); (13) Jining Shengtai Vegetables & Fruits Co., Ltd. (Shengtai); (14) Golden Bird; (15) Xinboda; and (16) Harmoni.

On March 30, 2015, we issued a memorandum indicating that we would examine the two exporters (Golden Bird and Xinboda) with the largest volume of imports into the United States.<sup>12</sup> The Department issued questionnaires to Golden Bird and Xinboda on April 1, 2015. Golden Bird notified the Department on May 5, 2015, that it would not respond to our questionnaire.<sup>13</sup> After Golden Bird's notification that it would not respond to our NME Questionnaire, we selected QTF as a third mandatory respondent in this administrative review on August 27, 2015.<sup>14</sup>

Between May 5, 2015 and May 22, 2015, QTF and Xinboda timely filed their responses to the Department's initial questionnaire. Petitioners submitted new factual information concerning shipment volumes for Xinboda and QTF on June 5, 2015.

On August 18 and 27, 2015, the Department issued supplemental questionnaires to both Xinboda and QTF, respectively. Between September 1, 2015 and September 19, 2015, Xinboda and QTF timely filed their responses. Petitioners filed comments regarding Xinboda's supplemental questionnaire response (SQR) on September 21, 2015<sup>15</sup> and QTF's SQR on October 6, 2015.<sup>16</sup> On October 23, 2015, the Department issued a second supplemental questionnaire to which

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<sup>10</sup> See Shandong Zhengyang's filing, "Fresh Garlic from the People's Republic of China – Entry of Appearance and Certificate of No Sales," (January 13, 2015).

<sup>11</sup> See Lanling Qingshui's filing, "Fresh Garlic {sic} the People's Republic of China – Entry of Appearance and Certificate of No Sales," (January 13, 2015).

<sup>12</sup> See Memorandum to Edward Yang, Director AD/CVD Operations Office VII, "Administrative Review of the Antidumping Order on Fresh Garlic from the People's Republic of China: Respondent Selection Memorandum," (March 30, 2015) (Initial Respondent Selection Memorandum).

<sup>13</sup> See Golden Bird's filing, "Fresh Garlic from the People's Republic of China – 20<sup>th</sup> Antidumping Administrative Review – No Response to the Department's Non-market Economy Questionnaire by Hebei Golden Bird Trading Co., Ltd.," (May 5, 2015) (Golden Bird No Response Statement).

<sup>14</sup> See Memorandum to Edward Yang, Director AD/CVD Operations Office VII, "Administrative Review of the Antidumping Duty Order on Fresh Garlic From the People's Republic of China: Selection of Additional Mandatory Respondent," (August 27, 2015) (Additional Respondent Selection Memorandum).

<sup>15</sup> See Petitioners' submission, "20<sup>th</sup> Administrative Review of Fresh Garlic from the People's Republic of China – Petitioners' Comments on Deficiencies in Xinboda's First Supplemental Questionnaire Response," (September 18, 2015).

<sup>16</sup> See Petitioners' submission, "20<sup>th</sup> Administrative Review of Fresh Garlic from the People's Republic of China – Petitioners' Comments on Deficiencies in Qingdao Tiantaixing Foods Co., Ltd.'s Supplemental Questionnaire Response," (October 6, 2015).

Xinboda responded on November 3, 2015.<sup>17</sup> On November 5, 2015, Petitioners filed comments stating that the Department should apply total adverse facts available to QTF's preliminary rate.<sup>18</sup>

For discussions concerning surrogate values, surrogate countries, and QTF's deficiencies, please see the "Surrogate Value," "Surrogate Country," and "Application of AFA to QTF" sections below.

### *Partial Rescission of Administrative Review and Preliminary Intent to Rescind Review*

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. Between January 16 and March 17, 2015, all relevant review requests were timely withdrawn for 81 companies.<sup>19</sup> Therefore, we are rescinding this administrative review with respect to those 81 companies.<sup>20</sup>

In addition, the Department preliminarily intends to rescind this administrative review with respect to Jinxiang Kaihua Imp & Exp Co., Ltd. (Kaihua). Kaihua timely filed a no-shipment certification.<sup>21</sup> In response to the Department's request for clarification of its no shipment filing, Kaihua clarified that it made no sales of subject merchandise during the instant administrative review other than its sale that was subject to a separate new shipper review (NSR) with the an overlapping POR.<sup>22</sup> The Department notes that in the concurrent NSR referenced by Kaihua, we found that its sale was not *bona fide* and thus rescinded Kaihua's NSR.<sup>23</sup> In accordance with our findings in the NSR, as well as in accordance with Department practice, we intend to rescind this review with respect to Kaihua.<sup>24</sup>

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<sup>17</sup> See letter to Xinboda, "2013-2014 Administrative Review of Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Second Supplemental Questionnaire," (Xinboda Second SQ) (October 23, 2015).

<sup>18</sup> See letter from Petitioners, "20<sup>th</sup> Administrative Review of Fresh Garlic from the People's Republic of China- Petitioners' Pre-Preliminary Comments Regarding the Appropriate Rate to Apply to QTF," (November 5, 2015).

<sup>19</sup> See Petitioners' submission, "20th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China- Petitioners' Withdrawal of Certain Requests for Administrative Review," at 2-4 (January 16, 2015); El Bosque Garlic Farm's filing, "Fresh Garlic from the People's Republic of China- Withdrawal of Review Request in 20th Administrative Review filed on behalf of El Bosque Garlic Farm," at 1 (March 17, 2015); and Zhengzhou Harmoni Spice Co., Ltd.'s filing, "Harmoni Withdrawal of Review Request: Twentieth Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China (A-570-831)," at 1 (January 16, 2015).

<sup>20</sup> See *Fresh Garlic from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2013-2014*, at Appendix I (*Garlic 2013-2014 Preliminary Federal Register Notice*) (dated concurrently with this memorandum).

<sup>21</sup> See Kaihua's submission, "Fresh Garlic from the People's Republic of China – Entry of Appearance and Certificate of No Sales," (January 13, 2015).

<sup>22</sup> See letter to Kaihua, "2013-2014 Administrative Review of Fresh Garlic from the PRC," (October 30, 2015); see also letter from Kaihua, "Fresh Garlic from the People's Republic of China-Response to October 30, 2015 letter and Amended Certificate of No Sales," (November 9, 2015).

<sup>23</sup> See *Fresh Garlic From the People's Republic of China: Final Rescission of the Semiannual Antidumping Duty New Shipper Review of Jinxiang Kaihua Imp & Exp Co., Ltd.*, 80 FR 60881 (October 8, 2015) and accompanying Issues and Decision Memorandum.

<sup>24</sup> See *Fresh Garlic From the People's Republic of China: Final Results and Partial Rescission of the 18th Antidumping Duty Administrative Review; 2011-2012*, 79 FR 36721 (June 30, 2014) and accompanying Issues and Decision Memorandum at Comment 18. If our final decision is to rescind this administrative review with respect to

### III. SCOPE OF THE ORDER

The products covered by the order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay. The scope of this 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: 0703.20.0010, 0703.20.0020, 0703.20.0090, and of the Harmonized Tariff Schedule of the United States (HTSUS).

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.

### IV. DISCUSSION OF METHODOLOGY

#### *Preliminary Determination of No Shipments*

The companies listed in Appendix III of *Garlic 2013-2014 Preliminary Federal Register Notice* timely filed “no shipment” certifications stating that they had no entries of subject merchandise during the POR. The Department subsequently asked CBP to conduct a query on potential shipments made by these companies during the POR; CBP provided no evidence that contradicted their claims of no shipments the POR. Based on the certifications by these companies and our analysis of CBP information, we preliminarily determine that the companies listed in Appendix III of *Garlic 2013-2014 Preliminary Federal Register Notice* did not have any reviewable transactions during the POR. In addition, the Department finds that consistent with its refinement to its assessment practice in non-market economy (NME) cases, further discussed below, it is appropriate not to rescind the review in part in these circumstances but to complete the review with respect to these 10 companies and issue appropriate instructions to CBP based on the final results of the review.<sup>25</sup>

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Kaihua, we will not issue liquidation instructions, because there currently is a preliminary injunction against liquidation of the relevant entries from Kaihua. This injunction was issued on October 22, 2015, in Court of International Trade case number 15-00289.

<sup>25</sup> See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011); see also “Assessment Rates” section below.

### *Non-Market Economy Status*

The Department considers the PRC to be an NME country.<sup>26</sup> In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the Department. Therefore, we continue to treat the PRC as an NME country for purposes of these preliminary results.

### *Separate Rate Determination*

In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may apply for separate rate status in NME reviews.<sup>27</sup> In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assessed a single antidumping duty rate.<sup>28</sup> It is the Department's policy to assign all exporters of subject merchandise in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.<sup>29</sup> Exporters can demonstrate this independence through the absence of both *de jure* (in law) and *de facto* (in fact) governmental control over export activities.<sup>30</sup> The Department analyzes each entity's export independence under a test first articulated in *Sparklers* and as further developed in *Silicon Carbide*.<sup>31</sup> However, if the Department determines that a company is wholly foreign-owned or located in a market economy (ME), then a separate rate analysis is not necessary to determine whether it is independent from government control.<sup>32</sup>

In order to demonstrate separate-rate status eligibility, the Department normally requires an entity, for which a review was requested, and which was assigned a separate rate in a previous segment, to submit a separate-rate certification stating that it continues to meet the criteria for obtaining a separate rate.<sup>33</sup> For entities that were not assigned a separate rate in the previous segment, however, the Department requires a separate rate application.<sup>34</sup>

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<sup>26</sup> See, e.g., *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Results in the First Administrative Review, Preliminary Rescission, in Part, and Extension of Time Limits for the Final Results*, 76 FR 62765, 62767-68 (October 11, 2011), unchanged in *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review*, 77 FR 21734 (April 11, 2012).

<sup>27</sup> See *Initiation Notice* at 79 FR 76956.

<sup>28</sup> See Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries, available at <http://trade.gov/enforcement/policy/bull05-1.pdf>.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> See *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"); see also *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*").

<sup>32</sup> See, e.g., *Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China*, 72 FR 52355, 52356 (September 13, 2007).

<sup>33</sup> See *Initiation Notice*.

<sup>34</sup> *Id.*

## *Separate Rate Applications and Certifications*

As noted under the “Background” section of this memorandum, sixteen companies timely submitted separate rate status certifications or applications. As discussed above, Xinboda was selected as a mandatory respondent and we are rescinding this review with respect to Harmoni. As discussed below, we are preliminarily treating Golden Bird and QTF as part of the PRC-wide entity.

The remaining timely-filed separate rate applications or certifications came from Feiteng, Yongjia, Shunchang, Maycarrier, Yuting, Guihua, Shengtai, Hejia, Hongqiao, Yantai, Bainong, and Farmlady. Each company certified that it had suspended entries during the POR.

### 1. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter’s business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.<sup>35</sup>

The evidence placed on the record of the instant administrative review by Xinboda, Feiteng, Yongjia, Shunchang, Maycarrier, Yuting, Guihua, Shengtai, Hejia, Hongqiao, Yantai, Bainong, and Farmlady demonstrates an absence of *de jure* government control under the criteria identified in *Silicon Carbide* and *Sparklers*.

### 2. Absence of *De Facto* Control

Typically, the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.<sup>36</sup> The Department determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from granting a separate rate.

The evidence placed on the record of the instant administrative review by Xinboda, Feiteng, Yongjia, Shunchang, Maycarrier, Yuting, Guihua, Shengtai, Hejia, Hongqiao, Yantai, Bainong, and Farmlady demonstrates an absence of *de facto* government control under the criteria identified in *Silicon Carbide* and *Sparklers*. Accordingly, the Department has preliminarily determined that these companies have demonstrated that they are eligible for a separate rate.

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<sup>35</sup> See *Sparklers*, 56 FR at 20589.

<sup>36</sup> See *Silicon Carbide*, 59 FR at 22586-87; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People’s Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

### *Separate Rate for Non-Selected Companies*

Pursuant to section 777A(c) of the Act, because of the large number of exporters/producers, and lacking the resources to examine all companies, the Department determined that it was not practicable to individually examine all companies subject to this review and, thus, employed a limited examination methodology. Pursuant to section 777A(c)(2)(B) of the Act, we selected QTF, Golden Bird, and Xinboda, the exporters accounting for the largest volume of the subject merchandise, as the mandatory respondents in this review.<sup>37</sup>

As discussed above, Feiteng, Yongjia, Shunchang, Maycarrier, Yuting, Guihua, Shengtai, Hejia, Hongqiao, Yantai, Bainong, and Farmlady have demonstrated their eligibility for a separate rate, but were not selected for individual examination in this review. The statute and the Department's regulations do not directly address the establishment of a rate to be applied to individual companies not selected for individual examination where the Department limited its examination in an AR pursuant to section 777A(c)(2) of the Act. The Department's practice in cases involving limited selection based on exporters accounting for the largest volumes of trade has been to look to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate in an investigation using rates established for individually investigated producers and exporters, excluding any zero or *de minimis* margins or any margins based entirely on facts available.<sup>38</sup> Here, the only individually-examined respondent for which the Department has preliminarily determined a weighted-average margin is Xinboda. As that margin is not zero, *de minimis*, or based entirely on facts available, the Department preliminarily determines that Xinboda's rate will be assigned to the non-selected separate rate recipients.

### *Margin for Companies Not Receiving a Separate Rate*

As noted above, we initiated administrative reviews for 161 producers/exporters of garlic, rescinded the reviews of 81 producers/exporters, intend to rescind the review for one additional producer/exporter, confirmed that 10 producers/exporters had no shipments of subject merchandise during the POR, and granted separate rates to 13 producers/exporters. Therefore, there remain 56 PRC producers/exporters under review. For these 56 entities that did not demonstrate their eligibility for separate rate status, the Department finds that they have not rebutted the presumption of government control and, therefore, are considered to be part of the PRC-wide entity.

### *The PRC-Wide Entity*

Upon initiation of the administrative review, we provided the opportunity for all companies upon which the review was initiated to complete either the separate-rate application or certification.<sup>39</sup> In NME proceedings, "'rates' may consist of a single dumping margin applicable to all exporters

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<sup>37</sup> See Initial Respondent Selection Memorandum and Additional Respondent Selection Memorandum.

<sup>38</sup> See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Preliminary Results and Partial Rescission of the Antidumping Duty Administrative Review and Preliminary Results of the New Shipper Review; 2012-2013*, 79 FR 42758 (July 23, 2014).

<sup>39</sup> The separate-rate application and certification are available at: <http://enforcement.trade.gov/nme/nme-sep-rate.html>.

and producers.”<sup>40</sup> As explained above in the “Separate Rates” section, all companies within the PRC are considered to be subject to government control unless they are able to demonstrate an absence of government control with respect to their export activities. Such companies are assigned a single antidumping duty rate distinct from the separate rate(s) determined for companies that are found to be independent of government control with respect to their export activities. We consider the influence that the government has been found to have over the economy to warrant determining a rate for the entity that is distinct from the rates found for companies that provided sufficient evidence to establish that they operate freely with respect to their export activities.<sup>41</sup> In this regard, no record evidence indicates that such government influence is no longer present or that our treatment of the PRC-wide entity is otherwise incorrect.

The Department’s change in policy regarding conditional review of the PRC-wide entity applies to this review.<sup>42</sup> Under this policy, the PRC-wide entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity. Because no party requested a review of the PRC-wide entity in this review, the entity is not under review, and the entity’s rate is not subject to change. As such, the PRC-wide rate from the previous review remains unchanged, and the PRC-wide entity is receiving a margin of 4.71 U.S. dollars per kilogram.<sup>43</sup> As discussed below, the Department preliminarily finds that Golden Bird and QTF do not qualify for a separate rate, and as such, are part of the PRC-wide entity.

#### *Application of Facts Available and Use of Adverse Inferences*

Section 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that if necessary information is not available on the record or if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to section 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified as provided for in section 782(i) of the Act, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that if an interested party “promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information requested in the requested form and manner,” the Department shall consider the ability of the interested party and may modify the requirements to avoid imposing an unreasonable burden on that party.

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<sup>40</sup> See 19 CFR 351.107(d).

<sup>41</sup> See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People’s Republic of China: Final Results of 2005-2006 Administrative Review and Partial Rescission of Review*, 72 FR 56724 (October 4, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

<sup>42</sup> See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963, 65970 (November 4, 2013).

<sup>43</sup> See, e.g., *id.*; and *Fresh Garlic From the People’s Republic of China: Final Results and Partial Rescission of the 19th Antidumping Duty Administrative Review; 2012-2013*, 80 FR 34141, 34142 (June 15, 2015).

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person an opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states 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 the applicable requirements established by the administering authority if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

On June 29, 2015, the President of the United States signed into law the TPEA, which made numerous amendments to the AD and CVD law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.<sup>44</sup> The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.<sup>45</sup>

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a weighted average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information. Section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. In addition, the SAA explains that the Department may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>46</sup> Further, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.<sup>47</sup>

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<sup>44</sup> See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015) (TPEA). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments to section 771(7) of the Act, which relate to determinations of material injury by the International Trade Commission. See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Applicability Notice*).

<sup>45</sup> *Id.*, 80 FR at 46794-95. The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>.

<sup>46</sup> See *Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Rep. 103-316, Vol. 1, 103d Cong. at 870 (1994) (SAA).

<sup>47</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products From Japan*, 65 FR 42985 (July 12, 2000); *Antidumping Duties, Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997); and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (CAFC 2003) (*Nippon Steel*).

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information 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 of the Act concerning the subject merchandise. Further, and under the TPEA, the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.

Finally, under the new section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins. The TPEA also makes clear that when selecting an adverse facts available (AFA) margin, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.

### *Golden Bird*

As discussed above in the “Background” section, Golden Bird informed that Department that it would not respond to our NME questionnaire.<sup>48</sup> By not responding to our questionnaire, Golden Bird failed to rebut the presumption that its export activities are controlled by the government and therefore failed to demonstrate that it is entitled to a separate rate. Accordingly, Golden Bird is considered to be part of the PRC-wide entity.

### *QTF*

In its questionnaire responses, QTF reported that it produced all of the garlic it sold during the POR at its facility in Qingdao City.<sup>49</sup> QTF submitted Chinese Inspection and Quarantine (CIQ) certificates that covered all of its garlic exports to the United States as part of its initial Section A questionnaire response.<sup>50</sup> On June 5, 2015 and again on October 5, 2015, Petitioners submitted information that indicates that the CIQ system and regulations require that each agricultural producer be assigned its own unique CIQ code, which must be listed on the CIQ certificates that accompany each export shipment of agricultural products. The information submitted by Petitioners also indicates that inspections of a facility’s shipments must be conducted by the local CIQ bureau that has jurisdiction over the geographic area where the production facility is located. Petitioners contend that an analysis of the CIQ certificates submitted by QTF shows that a majority of CIQ certificates were issued by CIQ bureaus elsewhere in Shandong Province and/or showed CIQ numbers associated with producers other than QTF. Petitioners argued that

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<sup>48</sup> See Golden Bird No Response Statement at 1.

<sup>49</sup> See QTF’s submission, “Fresh Garlic from the People’s Republic of China – SAQR in 20<sup>th</sup> Antidumping Administrative Review filed on behalf of Qingdao Tiantaixing Foods Co., Ltd.,” at A-13 (May 5, 2015) (QTF Section A QR).

<sup>50</sup> *Id.* at Exhibit A-18.

these discrepancies are a clear indication that companies other than QTF produced the vast majority of garlic that QTF sold during the POR.<sup>51</sup>

In response to Petitioners' allegations, QTF reiterated its claim that it produced all of the garlic it exported to the U.S. during the POR at its sole facility in Qingdao City. QTF further argued that the PRC regulations Petitioners cite are not a law but an agency decree that provides guidance and that inspections may be performed electronically, which does not require physical inspection at the place of exportation.<sup>52</sup>

We examined the translation and original language version of the CIQ regulations placed on the record by Petitioners and confirmed that they clearly state that the CIQ certificates must be issued by the local CIQ bureau where a processing facility is domiciled and that the CIQ certificate, as well as the packaging, must bear the producer's registration number. Our analysis of the CIQ certificates submitted by QTF indicates that the local Qingdao CIQ bureau issued CIQ certificates for only a small portion of the garlic that QTF claimed to have produced at its facility in Qingdao City. The vast majority of CIQ certificates submitted by QTF were issued by CIQ bureaus elsewhere in Shandong Province and in many instances also showed CIQ numbers associated with producers other than QTF. Certain information regarding QTF's CIQ certifications is business proprietary; therefore, a complete discussion of these certifications is provided in a separate memorandum.<sup>53</sup>

The Department's initial Section A questionnaire requests that each respondent provides a list of all manufacturing facilities involved in the manufacture of subject merchandise and that each respondent submits all of the CIQ certificates for its exports to the United States.<sup>54</sup> In addition, our section A questionnaire also asks respondents: 1) whether it has any affiliated producers; 2) whether any intermediate parties are involved in the production of subject merchandise during the POR; and 3) whether it sold any subject merchandise supplied by an unaffiliated producer.<sup>55</sup> We also note that section D of the Department's NME questionnaire instructs respondents to "report factors information for all models or product types in the U.S. market sales listing submitted by you (or the exporter) in response to Section C of the questionnaire, including that portion of the production that was not destined for the United States."<sup>56</sup> In its questionnaire responses, QTF reported that it produced all of the garlic it sold during the POR at its facility in Qingdao City and reported the factors of production (FOPs) solely for that production facility.<sup>57</sup>

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<sup>51</sup> See Petitioners' filing, "20<sup>th</sup> Administrative Review of Fresh Garlic from the People's Republic of China – Petitioners' Comments on Major Deficiencies in QTF's Initial, Voluntary Questionnaire Responses," (June 5, 2015); see also Petitioners' submission, "20<sup>th</sup> Administrative Review of Fresh Garlic from the People's Republic of China – Petitioners' Comments on Deficiencies in Qingdao Tiantaixing Foods Co., Ltd.'s Supplemental Questionnaire Response," (October 5, 2015).

<sup>52</sup> See QTF's submission, "Fresh Garlic from the People's Republic of China 20th Review- QTF's Rebuttal to FGPA's Response to QTF's Supplemental Questionnaire," at 2-3 (October 14, 2015) (QTF Rebuttal Comments).

<sup>53</sup> See Memorandum to the File, "Re: Application of Adverse Facts Available to Qingdao Tiantaixing Foods Co., Ltd. (QTF)" (dated concurrently with this notice) (QTF AFA Memorandum).

<sup>54</sup> See the Department's Non-Market Economy Initial Questionnaire at A-5 through A-6 (question 3b) and A-7 (question 4I); see also QTF Section A QR at A-13 and A-18.

<sup>55</sup> See the Department's Non-Market Economy Initial Questionnaire at A-5 through A-6 (question 3).

<sup>56</sup> See the Department's Non-Market Economy Initial Questionnaire at D-1.

<sup>57</sup> See QTF's filing, "Fresh Garlic from the People's Republic of China – SDQR In Antidumping New Shipper Review of Qingdao WTF Import & Export Co., Ltd.," at 3-4 (May 20, 2015).

Based on our analysis, we preliminarily determine that QTF was not the sole producer of the garlic it reported in its sales database and that necessary information is not on the record. We further find that QTF withheld requested information, failed to provide requested information by the established deadlines and significantly impeded the proceeding. Therefore, the Department preliminarily determines to rely on the facts available pursuant to sections 776(a)(1) and 776(a)(2)(A)-(C) of the Act.

We note that where the Department determines that a response does not comply with the request, section 782(d) of the Act requires that the Department provide party with an opportunity to correct deficient responses. In this proceeding, QTF had an opportunity to place information on the record to rebut or clarify the CIQ information and explain the discrepancies among its CIQ certificates, including in response to a supplemental questionnaire the Department issued on the CIQ certificate discrepancies. Instead, QTF reiterated its claim that it produced all of the garlic it exported to the U.S. during the POR at its sole facility in Qingdao City.<sup>58</sup> With respect to issue of why significant numbers of CIQ certificates were issued by CIQ Bureaus outside of Qingdao City, QTF proffered multiple theories. QTF stated that “agents” likely had its subject merchandise inspected elsewhere.<sup>59</sup> QTF also suggested that CIQ inspections of its garlic physically took place in the other areas because CIQ bureaus in these areas were better suited for those inspections.<sup>60</sup> Finally, QTF also suggested that CIQ inspections took place on the raw material garlic input bulbs rather than after its final processing of the fresh garlic.<sup>61</sup> With respect to the issue of why the CIQ certificates showed CIQ registration numbers associated with two other processors, QTF ventures that agents “may have used entities matching the CIQ codes on the CIQ certificates.”<sup>62</sup> Due to the business proprietary nature of the information, the specific explanations are discussed in more detail in QTF’s AFA Memorandum.

Based on the information on the record of this review, the Department is not able to determine that a substantial majority of the garlic sold by QTF was produced by QTF. In addition, without complete information regarding the identity of the producers of subject merchandise, we cannot determine that the information QTF reported for its FOPs is complete as well. As noted previously, QTF’s CIQ documentation indicates that it did not produce all of the garlic it sold to the United States during the POR and that its documentation was not in compliance with the applicable PRC laws and regulations governing CIQ certification. We preliminarily find that QTF’s failure to report all of its processors and therefore all of its FOP information, over which it maintained control at all times, indicates that QTF did not act to the best of its ability to comply with our requests for information. The Court of Appeals for the Federal Circuit (Federal Circuit), in *Nippon Steel*, provided an explanation of the “failure to act to the best of its ability,” stating that the ordinary meaning of “best” means “one’s maximum effort,” and that the statutory mandate that a respondent act to the “best of its ability” requires the respondent to do the maximum it is able to do.<sup>63</sup> The Federal Circuit acknowledged, however, that while there is no

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<sup>58</sup> See QTF Section A QR at A-13; letter from QTF, “Response to Department’s Supplemental Questionnaire Filed on Behalf of Qingdao Tiantaixing Foods Co., Ltd.,” (September 17, 2015) at 2 (QTF First Supplemental QR); and QTF Rebuttal Comments at 17.

<sup>59</sup> See QTF Rebuttal Comments at 13.

<sup>60</sup> See QTF First Supplemental QR at 3 and exhibit 2.

<sup>61</sup> *Id.* at 3.

<sup>62</sup> *Id.*

<sup>63</sup> *Nippon Steel Corporation v. United States*, 337 F.3d 1373 (CAFC 2003) (*Nippon Steel*) at 1382.

willfulness requirement, “deliberate concealment or inaccurate reporting” would certainly be sufficient to find that a respondent did not act to the best of its ability.<sup>64</sup> Compliance with the “best of its ability” standard is determined by assessing whether a respondent has put forth its maximum effort to provide the Department with full and complete answers to all inquiries in an investigation.<sup>65</sup> The Federal Circuit further noted that, while the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.<sup>66</sup>

Based on our analysis of the information and comments on the record, we preliminarily conclude that QTF’s various explanations are not credible and that other entities produced the bulk of the subject merchandise it reported selling to the United States during the POR. Here, we find that the application of AFA is appropriate under section 776(b) of the Act because QTF has provided inconsistent and unreliable information and failed to cooperate to the best of its ability. Due to the business proprietary nature of the information, the specific inconsistencies are discussed in more detail in QTF’s AFA Memorandum. Furthermore, we find that QTF’s misrepresentations pervade the data in the record, including its Section A responses regarding its entitlement to separate rate status. Specifically, in its Section A questionnaire response, QTF reported that: 1) it “conducts all garlic purchasing, processing and selling functions at its facility;”<sup>67</sup> 2) it sold fresh garlic and peeled garlic at its facility;<sup>68</sup> 3) there were no intermediate parties involved in the production of subject merchandise during the POR;<sup>69</sup> and 4) responded that questions about sales of merchandise under consideration by an unaffiliated producer were not applicable since QTF produced the merchandise under consideration and sold that merchandise to the United States.<sup>70</sup>

QTF’s misrepresentations in response to our Section A Questionnaire undermine the reliability of its reported information, including information pertaining to government control over its export activities. Accordingly, we have not considered any information in QTF’s Section A responses. QTF has failed to rebut the presumption of government control over its export activities and failed to demonstrate its eligibility for a separate rate. Therefore, we preliminarily determine that QTF is part of the PRC-wide entity.

#### *Surrogate Country and Surrogate Value Data*

On April 20, 2015, the Department sent interested parties a letter inviting comments on the concurrently released list of potential surrogate countries and primary surrogate country (SC) selection, as well as surrogate value (SV) data.<sup>71</sup> The Department set deadlines of June 1, 2015,

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<sup>64</sup> *Id.*, at 1380.

<sup>65</sup> *Id.*, at 1382.

<sup>66</sup> *Id.*

<sup>67</sup> *See* QTF Section A QR at A-13.

<sup>68</sup> *Id.* at A-20.

<sup>69</sup> *Id.* at A-21.

<sup>70</sup> *Id.* at A-22.

<sup>71</sup> *See* Memorandum from the Department, “2013-2014 Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China: Request for Surrogate Country and Surrogate Value Comments and Information,” (April 20, 2015). *See also* Memorandum from Carole Showers, Director, Office of Policy, Enforcement and Compliance, “Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Fresh Garlic (“Garlic”) from the People’s Republic of China (“China”),” (April 10, 2015) (OP Memorandum). The Department determined that Romania, Bulgaria, South Africa, Ecuador,

for comments on the selection of the primary surrogate country and June 11, 2015, for rebuttal comments, respectively.

On April 27, 2015, Xinboda submitted comments requesting that the Department consider India and Thailand as the primary surrogate country.<sup>72</sup> Xinboda stated that the Department's policy is to accept arguments concerning countries not initially listed by its Office of Policy as economically comparable and countries where the Department is likely to find quality data.<sup>73</sup> Xinboda asserts that "the Department still considers such countries (*i.e.*, India) economically comparable, merely less so than the listed countries."<sup>74</sup> Xinboda concludes that India deserves consideration because it has a history of producing regular pricing for large bulb garlic that the Department has accepted in numerous past segments.<sup>75</sup> On May 4, 2015, Petitioners submitted comments rebutting Xinboda's arguments that the Department should consider India and Thailand.<sup>76</sup> Petitioners argued that India should not be considered because it is not identified on the OP Memorandum as one of the six countries that are economically comparable to China based on the World Bank's most recent World Development Report.<sup>77</sup>

On June 1, 2015, Petitioners and Xinboda each timely provided comments on the selection of the primary SC.<sup>78</sup> On June 11, 2015, the Department received timely rebuttal comments from Petitioners and QTF on the SC selection.<sup>79</sup>

On June 17, 2015, QTF, Xinboda and Petitioners each provided information and comments on the selection of surrogate values.<sup>80</sup> On June 29, 2015, Petitioners and Xinboda submitted

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Thailand, and Ukraine are countries whose per capita gross national incomes (GNI) are comparable to the PRC in terms of economic development.

<sup>72</sup> See Letter from Xinboda, "Fresh Garlic from the People's Republic of China: Surrogate Country Comments for the Preliminary Determination," (April 27, 2015) (Xinboda's April SC Comments).

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 2.

<sup>75</sup> *Id.*

<sup>76</sup> See Letter from Petitioners, "20<sup>th</sup> Administrative Review of Fresh Garlic from the People's Republic of China – Petitioners' Rebuttal to Xinboda's Comments on Department's List of Potential Surrogate Countries," (May 4, 2015) (Petitioners' May SC Rebuttal Comments).

<sup>77</sup> *Id.*; see also OP Memorandum.

<sup>78</sup> See Letter from Petitioners, "20<sup>th</sup> Administrative Review of Fresh Garlic from the People's Republic of China – Petitioners' Comments on Surrogate Country Selection," (June 1, 2015) (Petitioners SC Comments). See also Letter from Xinboda, "Fresh Garlic from the People's Republic of China: Surrogate Country Comments," (June 1, 2015) (Xinboda's SC Comments).

<sup>79</sup> See Letter from Petitioners, "20<sup>th</sup> Administrative Review of Fresh Garlic from the People's Republic of China – Petitioners' Rebuttal Comments on Surrogate Country Selection," (June 11, 2015) (Petitioners' SC Rebuttal Comments). See also, Letter from QTF, "Re: Fresh Garlic from the People's Republic of China - Rebuttal Comments on Surrogate Country Selection in 20<sup>th</sup> Antidumping Administrative Review filed on Behalf of Qingdao Tiantaixing Foods Co., Ltd.," (June 11, 2015) (QTF's SC Rebuttal Comments).

<sup>80</sup> See Letter from Petitioners, "20<sup>th</sup> Administrative Review of Fresh Garlic from the People's Republic of China – Petitioners' Surrogate Value Comments, (June 17, 2015) (Petitioners' SV Comments). See also, Letter from Xinboda, "Fresh Garlic from the People's Republic of China: Preliminary Surrogate Values Submission, (June 17, 2015) (Xinboda's SV Comments) and Letter from QTF, "Re: Fresh Garlic from the People's Republic of China – Surrogate Value Information for the 20<sup>th</sup> Antidumping Administrative Review filed on behalf of Qingdao Tiantaixing Foods Co., Ltd.

rebuttal comments on interested parties' surrogate value submissions.<sup>81</sup> On September 25, 2015 and November 2, 2015, Xinboda submitted additional surrogate value data.<sup>82</sup> On November 2, 2015, Petitioners submitted additional Romanian SV information.<sup>83</sup> On November 3, 2015, Petitioners submitted comments on surrogate valuation of post-farm gate operations.<sup>84</sup>

In addition, on September 17, 2015, Xinboda untimely submitted surrogate country information and comments regarding Mexico. The Department rejected Xinboda's untimely SC information and comments on September 25, 2015.<sup>85</sup> Xinboda's September 25, 2015 surrogate value submission provided garlic bulb data for Mexico.<sup>86</sup> On September 30, 2015, Xinboda requested that the Department reconsider its rejection of its untimely September 17, 2015, surrogate country information and comments.<sup>87</sup> On October 7, 2015, Petitioners requested that the Department reject Xinboda's September 25, 2015, submission of surrogate value data.<sup>88</sup>

Petitioners also requested that the Department reject Xinboda's request to reconsider its rejection of Xinboda's September 17, 2015 submission. The Department is rejecting Xinboda's September 30, 2015, request to reconsider its rejection of Xinboda's September 17, 2015 submission, for the reasons stated in its September 25, 2015 letter to Xinboda. The Department has the discretion to create its own rules of procedure related to the development of the record in an administrative proceeding in order to meet our statutory deadlines.

On November 12, 2015, Petitioners submitted a request asking that the Department reject Xinboda's November 2, 2015, SV submission.<sup>89</sup> Alternatively, Petitioners requested that if the Department does not reject Xinboda's entire November 2, 2015 SV submission, the Department should immediately strike information that does not relate to the SV in Mexico for factors of production.<sup>90</sup> According to Petitioners, this information is contained in Exhibits SV-4 through

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<sup>81</sup> See Letter from Petitioners, "20<sup>th</sup> Administrative Review of Fresh Garlic from the People's Republic of China – Petitioners' Rebuttal of Respondents' Surrogate Value Submissions," (June 29, 2015) (Petitioners' Rebuttal of SV Submissions). See also Letter from Xinboda, "Fresh Garlic from the People's Republic of China: Rebuttal Surrogate Value Comments," (June 29, 2015) (Xinboda's Rebuttal of SV Comments).

<sup>82</sup> See Letter from Xinboda, "Fresh Garlic from the People's Republic of China: Final Surrogate Value Submission," (November 2, 2015).

<sup>83</sup> See Letter from Petitioners, "20<sup>th</sup> Administrative Review of Fresh Garlic from the People's Republic of China - Petitioners' Submission of Additional Romanian Surrogate Re: Value Information," (November 2, 2015).

<sup>84</sup> See Letter from Petitioners, "20<sup>th</sup> Administrative Review of Fresh Garlic from the People's Republic of China - Petitioners' Comments on Surrogate Valuation of Post-Farmgate Re: Operations," (November 3, 2015).

<sup>85</sup> See Letter from the Department to Xinboda, (September 25, 2015).

<sup>86</sup> See Letter from Xinboda to the Department, "Fresh Garlic from the People's Republic of China: Mexico Surrogate Values," (September 25, 2015).

<sup>87</sup> See Letter from Xinboda to the Department, "Fresh Garlic from the People's Republic of China: Request to Reconsider Additional GNI and Surrogate Country Additional Data," (September 30 2015).

<sup>88</sup> See Letter from Petitioners, "20<sup>th</sup> Administrative Review of Fresh Garlic from the People's Republic of China – Petitioners' Request That Department Strike Xinboda's September 25, 2015 Submission and Reject Its Request to Reconsider Its Determination to Strike Xinboda's September 17, 2015 Submission," (October 7, 2015).

<sup>89</sup> See Letter from Petitioners, "20<sup>th</sup> Administrative Review of Fresh Garlic from the People's Republic of China – Petitioners' Response to Xinboda's Final Surrogate Value Submission," (November 2, 2015) (Petitioners' November Response).

<sup>90</sup> See Petitioners' November Response

SV-6, and consists of FAOSTAT 2013 Garlic Production, Imports of Garlic to the United States, and World Exports of Garlic.<sup>91</sup>

On November 18, 2015, the Department rejected Petitioners' June 29, 2015 rebuttal comments because Exhibit 1 contained untimely SC information.<sup>92</sup> On November 23, 2015, the Department rejected Xinboda's September 25, 2015 submission of surrogate value data, because Exhibit SV-5 contained untimely SC information.<sup>93</sup> Also, on November 23, 2015, the Department also rejected Xinboda's pre-preliminary comments and requested that Xinboda resubmit these comments without exhibits SV-4 through SV-6.<sup>94</sup> The Department provided Petitioners and Xinboda the opportunity to resubmit these submissions without the exhibits containing untimely information.<sup>95</sup>

### *Surrogate Country*

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's FOP, valued in a surrogate ME country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.<sup>96</sup> Reading sections 773(c)(1) and (c)(4) of the Act in concert, it is the Department's practice to select an appropriate surrogate country based on the availability and reliability of data.<sup>97</sup> The Department has identified Romania, Bulgaria, South Africa, Ecuador, Thailand, and Ukraine as countries with per capita GNI that are at the same level of economic development as the PRC.<sup>98</sup>

As discussed below, Petitioners contend that the Department should select Romania as the primary surrogate country, noting that Romania is at a level of economic development similar to the PRC and is a significant producer of fresh garlic.<sup>99</sup> Furthermore, Petitioners also argue that the quality and reliability of the Romanian data are superior.<sup>100</sup> They also note that Romania has tax-free, monthly, POR-specific price information for input garlic bulbs, the single most important factor of production.

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<sup>91</sup> *Id.*

<sup>92</sup> See Letter from the Department to Petitioners' Re: June 29, 2015 Rebuttal Comments (November 18, 2015) (Department Rejection of Petitioners' Rebuttal Comments).

<sup>93</sup> See Letter from the Department to Xinboda Re: Mexico Surrogate Values Filing (November 23, 2015) (Department Rejection of Xinboda's Mexico Surrogate Values).

<sup>94</sup> See Letter from the Department to Xinboda Re: Final Surrogate Value Submission (November 23, 2015) (Department Rejection of Xinboda's Surrogate Values).

<sup>95</sup> See Department Rejection of Petitioners' Rebuttal Comments, Department Rejection of Xinboda's Mexico Surrogate Values, and Department Rejection of Xinboda's Surrogate Values.

<sup>96</sup> See Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004).

<sup>97</sup> *Id.*

<sup>98</sup> See OP Memorandum.

<sup>99</sup> See Petitioners' SC Comments at Attachment 1, which shows data from National Institute of Statistics Romania and Petitioners SV Rebuttal Comments at 20-22.

<sup>100</sup> See Petitioners SV Rebuttal Comments.

As discussed below, Xinboda argues that the Department should select Thailand as the primary surrogate country.<sup>101</sup> Xinboda argues that Thailand is the most significant producer of garlic among the six potential surrogate countries on the Department's list of countries that are economically comparable.<sup>102</sup> Xinboda further argues that Thai sources for valuing factors of production meet all of the Department's criteria for selection of surrogate values as demonstrated in past segments.<sup>103</sup>

Xinboda also argues that the Department should consider using India. Xinboda maintains that the Department has relied on Indian garlic bulb prices in numerous past segments because, in part, Indian price data covers large-sized garlic bulbs similar to those grown in China.<sup>104</sup> Xinboda states that "India is the only country that is truly comparable to China with respect to significant production. China is the largest producer of garlic followed by India."<sup>105</sup>

Alternatively, Xinboda argues that the Department should look to per capita GNI information post-dating the deadline for SC comments in this proceeding, and to surrogate country lists issued on the basis of that information in other proceedings.<sup>106</sup> Xinboda further argues that even if the Department did not consider this GNI data, the Department can still rely on Mexican surrogate information because it constitutes the best available information.<sup>107</sup> Xinboda claims that Mexico is a significant producer of large bulb garlic and that after China, the United States imports the most garlic from Mexico.<sup>108</sup> Xinboda concludes that Mexico is superior to Romania because the market is "not tainted by protectionist tariffs or smuggling."<sup>109</sup>

#### A. Economic Comparability

Section 773(c)(4)(A) of the Act is silent with respect to how the Department may determine that a country is economically comparable to the NME country. As such, the Department's longstanding practice has been first to identify those countries which are at the same level of economic development as the PRC based on per capita GNI data reported in the World Bank's World Development Report.<sup>110</sup> We note that identifying potential surrogate countries based on GNI data has been affirmed by the CIT.<sup>111</sup>

As explained in the Department's *Policy Bulletin*, "{t}he surrogate countries on the list are not ranked."<sup>112</sup> This absence of ranking reflects the Department's long-standing practice that for the

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<sup>101</sup> See Xinboda's SC Comments and QTF's SC Rebuttal Comments.

<sup>102</sup> See OP Memorandum.

<sup>103</sup> See Xinboda's April SC Comments.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.* at 2.

<sup>106</sup> See Xinboda's letter to the Department, "Request to Reconsider Additional GNI and Surrogate Country Data," (September 30, 2015) and Xinboda's letter to the Department, "Fresh Garlic from the People's Republic: Pre-Preliminary Comments," (September 30, 2015) (Xinboda's Pre-Preliminary Comments).

<sup>107</sup> See Xinboda's Pre-Preliminary Comments at 6.

<sup>108</sup> *Id.* at 7.

<sup>109</sup> *Id.*

<sup>110</sup> See, e.g., *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2011-2012*, 79 FR 19053 at Comment I.a.

<sup>111</sup> See *Fujian Lianfu Forestry Co., Ltd. v. United States*, 638 F. Supp. 2d 1325 (CIT 2009).

<sup>112</sup> See *Policy Bulletin*.

purpose of surrogate country selection, the countries on the list “should be considered equivalent”<sup>113</sup> from the standpoint of their level of economic development based on GNI as compared to the PRC’s level of economic development and recognition of the fact that the concept of “level” in an economic development context necessarily implies a range of GNIs, not a specific GNI. This long-standing practice of providing a non-exhaustive list of countries at the same level of economic development as the NME country fulfills the statutory requirement to value FOPs using data from “one or more market economy countries that are at a level of economic development comparable to that of the nonmarket economy country.”<sup>114</sup> In this regard, “countries that are at a level of economic development comparable to that of the nonmarket economy country” necessarily includes countries that are at the same level of economic development as the NME country.

As discussed above, the Department considers that Romania, Bulgaria, South Africa, Ecuador, Thailand, and Ukraine are comparable to the PRC in terms of economic development.<sup>115</sup> We consider all six countries identified on the Surrogate Country List as having met this prong of the surrogate country selection criteria.

Countries on the segment record that are at the same level of economic development as the PRC are given equal consideration for the purposes of selecting a surrogate country. As a general rule, the Department selects a surrogate country that is at the same level of economic development as the NME unless it is determined that none of the countries are viable options because they: (a) are not significant producers of comparable merchandise, (b) do not provide sufficient reliable sources of publicly available SV data or are not suitable for use based on other reasons. Surrogate countries that are not at the same level of economic development as the NME country are selected only to the extent that data considerations outweigh the difference in levels of economic development.<sup>116</sup>

#### B. Significant Producers Comparable Merchandise

Section 773(c)(4)(B) of the Act requires the Department to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor the Department’s regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, the Department looks to other sources such as the *Policy Bulletin* for guidance on defining comparable merchandise. The *Policy Bulletin* states that “in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise.”<sup>117</sup> Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in

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<sup>113</sup> *Id.*

<sup>114</sup> See section 773(c)(4) of the Act.

<sup>115</sup> See Surrogate Country List.

<sup>116</sup> See Surrogate Country Memo. See also, e.g., *Certain Cased Pencils From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent Not To Revoke Order In Part; 2010-2011*, 78 FR 2363 (January 11, 2013) and accompanying Preliminary Decision Memorandum at 6, unchanged in *Certain Cased Pencils From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Determination To Revoke Order In Part; 2010-2011*, 78 FR 42932 (July 18, 2013).

<sup>117</sup> See *Policy Bulletin* at 2.

selecting a surrogate country.<sup>118</sup> Further, when selecting a surrogate country, the statute requires the Department to consider the comparability of the merchandise, not the comparability of the industry.<sup>119</sup> “In cases where the identical merchandise is not produced, the Department must determine if other merchandise that is comparable is produced. How the Department does this depends on the subject merchandise.”<sup>120</sup> In this regard, the Department recognizes that any analysis of comparable merchandise must be done on a case-by-case basis:

In other cases, however, where there are major inputs, *i.e.*, inputs that are specialized or dedicated or used intensively, in the production of the subject merchandise, *e.g.*, processed agricultural, aquatic and mineral products, comparable merchandise should be identified narrowly, on the basis of a comparison of the major inputs, including energy, where appropriate.<sup>121</sup>

Further, the statute grants the Department discretion to examine various data sources for determining the best available information.<sup>122</sup> Moreover, while the legislative history provides that the term “significant producer” includes any country that is a “significant net exporter,”<sup>123</sup> it does not preclude reliance on additional or alternative metrics. In the Final Results of the 2011-2012 administrative review of garlic, we relied on the Merriam-Webster definition of “significant” as “of noticeably or measurable large amount.”<sup>124</sup>

When considering whether any of the countries contained in the OP Surrogate Country List are also significant producers of comparable merchandise, the Department has preliminarily relied on the United Nations Food and Agriculture Organization (FAO) production data for fresh garlic, as it has in past reviews.

As noted below, there are no SV data or surrogate financial statements for Bulgaria, Ecuador, Ukraine, or South Africa on the record of this review. Therefore, it is unnecessary to determine whether these countries are significant producers of comparable merchandise since they cannot be considered for primary surrogate country selection purposes. Thus, the Department is left to consider whether Romania or Thailand are significant producers of comparable merchandise.

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<sup>118</sup> The *Policy Bulletin* also states that “if considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise.” *Id.* at note 6.

<sup>119</sup> See *Sebacic Acid from the People’s Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 65674, 65676 (December 15, 1997) (“{T}o impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute.”).

<sup>120</sup> See *Policy Bulletin* at 2.

<sup>121</sup> *Id.* at 3.

<sup>122</sup> See section 773(c) of the Act; see also *Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1990).

<sup>123</sup> See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988).

<sup>124</sup> See *Fresh Garlic From the People's Republic of China: Final Results and Partial Rescission of the 18th Antidumping Duty Administrative Review; 2011-2012*, 79 FR 36721 (June 30, 2014) and accompanying Issues and Decision Memorandum at 8.

Petitioners provided the FAO's 2013 garlic production data for Romania and Thailand.<sup>125</sup>

<b>Economically-Comparable Countries</b>	<b>Garlic Production (MTs)</b>
Thailand	77,886
Romania	62,156

Xinboda provided FAO data titled “Final 2012 Data and Preliminary 2013 Data” on the record of this proceeding, which shows production for the top 20 countries.<sup>126</sup> Although the title is “Final 2012 Data and Preliminary 2013 Data,” our analysis indicates that this data shows only the 2012 production for the top 20 countries.

We will be relying on the 2013 FAO data, which is more contemporaneous with our POR. This 2013 FAO data demonstrates that Thailand and Romania are significant producers of identical merchandise in that each country produces a “noticeably or measurable large amount” of fresh garlic.

### C. Data Availability

The *Policy Bulletin* states that, if more than one country meets the economic comparability and significant producer of comparable merchandise criteria, “then the country with the best factors data is selected as the primary surrogate country.”<sup>127</sup> Section 773(c)(1) of the Act instructs the Department to value the FOPs based upon the best available information from an ME country or a countries that the Department considers appropriate. When evaluating the best available information, the Department considers several factors including whether the SV is publicly available, contemporaneous with the POR, represents a broad-market average, tax and duty-exclusive, and specific to the input.<sup>128</sup> There is no hierarchy among these criteria.<sup>129</sup> It is the Department’s practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis.<sup>130</sup>

As noted above, there are no SV data or surrogate financial statements for Bulgaria, Ecuador, Ukraine, or South Africa on the record of this review. Therefore, these countries cannot be considered for primary surrogate country selection purposes. Thus, the Department is left to consider Romania or Thailand for selection as the primary surrogate country.

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<sup>125</sup> Petitioners’ May SC Rebuttal Comments at 3.

<sup>126</sup> See Attachment 1 of Xinboda’s SC Comments.

<sup>127</sup> See *Policy Bulletin*.

<sup>128</sup> See, e.g., *Utility Scale Wind Towers From the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value*, 77 FR 75984 (December 26, 2012) and accompanying Issues and Decision Memorandum at Comment 1.

<sup>129</sup> See, e.g., *Certain Preserved Mushrooms from the People’s Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006) and accompanying Issues and Decision Memorandum at Comment 1.

<sup>130</sup> See *Policy Bulletin*.

## 1. Romania

Petitioners argue that only Romania provides suitable SV information in this review.<sup>131</sup> Romania produces a substantial volume of identical merchandise. In addition to the fact that garlic bulbs grown in Romania are similar in size to the garlic bulbs grown in China, Petitioners contend that Romania has the highest quality data for garlic bulbs, provided by the Romanian government, specifically the National Institute of Statistics of Romania (NISR).<sup>132</sup> Petitioners explain that their comparison of the 2012 garlic bulb prices for Romania, which are separately published by NISR and FAO show that the price data are identical, indicating that FAO data are based on NISR data.<sup>133</sup> Petitioners further argue that this enhances the reliability of the NISR data for the 2013 segment of this review.<sup>134</sup>

Petitioners state that the garlic bulb data on the record for Romania is a monthly, broad market average which is publicly available, tax-free data and contemporaneous with the POR. The monthly prices are also superior to Thai prices with respect to reflecting a broad market average.<sup>135</sup> According to Petitioners, Romania's import and export volumes demonstrate that Romanian producers supplied 96 percent of the domestic market supply.<sup>136</sup>

Petitioners also argue that the garlic bulbs grown in Romania are physically similar to garlic bulbs grown in China. Petitioners cite to previous antidumping duty determinations of garlic from the PRC, which have found that Chinese garlic bulbs are large in diameter (*e.g.*, 50mm and larger)<sup>137</sup> and to the International Trade Commission (ITC), which has found that “{m}ost imported fresh garlic from China is considered USDA Grade No. 1 and generally ranges in size from 1 ½ to 2 ½ inches in diameter.”<sup>138</sup> Petitioners further argue that the findings of the Department and the ITC are generally consistent with and corroborate each other.<sup>139</sup>

As Petitioners state:

This same text provides a table of the most prominent varieties of garlic grown in Romania, including three varieties of garlic that are planted in the late fall and harvested the following summer, much as in China. The three main varieties are medium to large in size, with weight ranges of 40-60 grams, 25-35 grams, and 40-50 grams, respectively. *See id.* Public information provided by Chinese exporters reflects that, in general, the relationship between weight and size is 1 mm bulb diameter for each 1 gram of fresh garlic bulb (*e.g.*, a 250-gram

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<sup>131</sup> *See* Petitioners' SV Rebuttal Comments.

<sup>132</sup> *Id.*

<sup>133</sup> *See* Petitioners' SV Comments.

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *See* Petitioners' SC Rebuttal Comments at 13-14.

<sup>137</sup> *See, e.g., 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 (IDM) at 17 (*Garlic 2009-2010 AR Final Results*).

<sup>138</sup> *Fresh Garlic from China (Third Review)*, Inv. No. 731-TA-683, USITC Pub. 4316 at I-10 (April 2012) cited by Petitioners' SC Rebuttal Comments at 9.

<sup>139</sup> *Id.* at 10.

bag of fresh garlic contains 4 bulbs of 60 mm diameter weighing about 62 grams each (250/4 grams), noted as “0.06” kilograms). *See* Exhibit PRC-1 hereto.<sup>140</sup>

Petitioners also point to the recent offering of very large garlic (*i.e.*, greater than 60 mm in diameter) as evidence that Romania’s crop is “representative of the large and very large bulbs grown in China and sold in the United States as whole fresh garlic.”<sup>141</sup>

Xinboda submitted information intended to clarify the Romanian garlic market and rebut the reliability of the Romanian garlic bulb prices submitted by Petitioners.<sup>142</sup> In its Pre-Prelim Comments, Xinboda argued that Romania is not appropriate to use as a surrogate country because the Romanian garlic market is distorted by a garlic quota and widespread smuggling of Chinese garlic into Romania.<sup>143</sup> According to Xinboda, after the European Union (EU)-imposed quota for imported garlic from China is met, there is an additional import duty of 1,200 euro per tonne.<sup>144</sup> Xinboda states that the “price of garlic is not the result of market forces, but rather the result of a protectionist tariff quota. Thus it is not representative in China and not a reliable surrogate market.”<sup>145</sup>

## 2. Thailand

Xinboda argues that data from Thailand for valuing factors meets all of the Department’s criteria for selection of surrogate values.<sup>146</sup>

Petitioners contend that the limited quantity of domestically-grown Thai garlic sold within Thailand is not physically comparable to Chinese garlic bulbs, because of its small diameter and the physical form in which it is sold (not as bulbs, but as the entire plant).<sup>147</sup> Petitioners also argue that Thailand’s POR import and export volumes of garlic demonstrate that Thailand supplied only 58 percent of its domestic supply of garlic. This is based on domestic production of 77,886 MT and legal imports of 54,522 MTs. Of these imports, 97 percent come from China.<sup>148</sup> Petitioners further argue that even removing the Chinese imports changes the average unit value by only \$0.03 per kilogram.<sup>149</sup> Petitioners conclude that on the export side, the Thai garlic is of low value, which is mostly exported to Indonesia and sells for \$0.40 per kilogram.

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<sup>140</sup> *Id.*

<sup>141</sup> *Id.* at 11.

<sup>142</sup> *See* Xinboda’s Rebuttal of SV Comments.

<sup>143</sup> *See* Letter from Xinboda, “Fresh Garlic from the People’s Republic of China: Pre-Preliminary Comments,” dated November 17, 2015 (Xinboda’s Pre-Prelim Comments).

<sup>144</sup> *See* Xinboda’s Pre-Prelim Comments.

<sup>145</sup> *Id.* at 3.

<sup>146</sup> *See* Xinboda’s SC Comments at 2.

<sup>147</sup> *See* Exhibits TH-1, TH-2, and TH-3 of Petitioners’ SC Rebuttal Comments. Xinboda did not address the argument by Petitioners that the garlic produced in Romania is more physically similar to Chinese garlic than the garlic produced in Thailand.

<sup>148</sup> Petitioners contend that the Thai garlic market is dominated by low-priced Chinese garlic, the majority of which is smuggled into Thailand. *Id.* at 6.

<sup>149</sup> *Id.* at 7.

### *Surrogate Country Selection*

The garlic bulb is the single most important SV used to calculate normal value in this administrative review. As an initial matter, the Department has repeatedly determined that size and quality are the most important characteristics of fresh garlic exported from the PRC to the United States because the price of the bulb varies with its size.<sup>150</sup> Information on the record of this review indicates that the diameter of garlic bulbs produced in Romania is more similar to the bulbs grown in China and sold in the United States as whole fresh garlic than the smaller sized garlic bulbs grown in Thailand.<sup>151</sup> Our analysis of the SV data for garlic from Thailand indicates that it is not contemporaneous with the current POR. (Xinboda provided annual data for 2006 through 2012 and data for the first four months of 2015.<sup>152</sup>) Moreover, it is unclear whether the Thai data is exclusive of duties and taxes, or represents a broad market average. In contrast, the SV information on the record for Romania is for a 12 month period which is contemporaneous with the POR. The data is publicly available, tax-free and reflects a broad market average. Finally, information on the record of this review indicates that the garlic bulbs grown in Romania are more physically similar to the garlic produced in China than the garlic produced in Thailand.

Finally, consistent with past practice, we find that the mere existence of tariffs and quotas on imports of a product cannot be presumed to have an effect on prices of domestic production unless there is information on the record suggesting an effect.<sup>153</sup> In the instant case, Xinboda has provided information which indicates that Romanian garlic imports, exports and prices changed after Romania joined the EU in 2007. However, there is no information on the record to support Xinboda's claim that EU-imposed tariffs and quotas on imported Chinese garlic have distorted garlic prices in the Romanian market. We find no evidence that the Government of Romania undertook steps to interfere or to distort garlic prices during the POR.

Therefore, the Department preliminarily finds Romania to be the primary surrogate country for this review because Romania is at a comparable level of economic development pursuant to 773(c)(4) of the Act, is a significant producer of comparable merchandise that is more physically similar to the garlic produced in China than the garlic produced in Thailand. Finally, there is publicly available data from Romania for all FOPs on the record of this review. The Department preliminarily selects Romania as the primary surrogate country for this review. A detailed explanation of the SVs used is provided below in the "Normal Value" section of this notice.

As discussed above, Xinboda argued that the Department should consider using India or Mexico as the primary surrogate country. However, as noted above, the Department only departs from the countries on the OP list if we find that none of the countries on the list are significant producers of identical or comparable merchandise or there are issues regarding the availability of SVs from the countries on the list. As discussed above, we have determined that at least two

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<sup>150</sup> See, e.g., *Garlic 2009-2010 AR Final Results* IDM at 17.

<sup>151</sup> See Petitioners' SC Rebuttal Comments.

<sup>152</sup> See "Reconciliation of Thai OAE data and FAOStat data," Xinboda's SV Comments at Exhibits SV-24 and SV-27.

<sup>153</sup> See *Fresh Garlic From the People's Republic of China: Final Results of the Semiannual Antidumping Duty New Shipper Review of Jinxiang Merry Vegetable Co., Ltd. and Cangshan Qingshui Vegetable Foods Co., Ltd.; 2012-2013*, 79 FR 62103 (October 16, 2014) and accompanying Issues and Decision Memorandum at Comment 1.

countries identified on the Surrogate Country List are significant producers of identical or comparable merchandise and that Romania provides sufficient reliable sources of data from which to derive SVs. Therefore, we have not considered using India or Mexico as the primary surrogate country and have not considered the potential SV information from those two countries.

#### *Date of Sale*

The Department's regulations at 19 CFR 351.401(i) state as follows:

In identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.<sup>154</sup>

Information on the record of this review indicates that that Xinboda sets the material terms of sale on invoice date. Xinboda reported invoice date as its date of sale.<sup>155</sup>

#### *Comparisons to Normal Value*

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether Xinboda's sales of the subject merchandise from the People's Republic of China to the United States were made at less than normal value, the Department compared the export price to the normal value as described in the export price and "Normal Value" sections of this memorandum.

##### A. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average normal values to weighted-average export prices (or constructed export prices) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, the Department examines whether to compare weighted-average normal values with the export prices (or constructed export prices of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of administrative reviews, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) (2012) in administrative

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<sup>154</sup> See 19 CFR 351.401(i); see also *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10; *Allied Tube and Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-1092 (CIT 2001) (upholding the Department's rebuttable presumption that invoice date is the appropriate date of sale).

<sup>155</sup> See Xinboda's Section C response, dated May 22, 2015, at C-6.

reviews is, in fact, analogous to the issue in less-than-fair-value investigations.<sup>156</sup> In recent investigations, the Department applied a “differential pricing” analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.<sup>157</sup> The Department finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department’s additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating a respondent’s weighted-average dumping margin.

The differential pricing analysis used in these preliminary results requires a finding of a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported customer codes. Regions are defined using the reported destination code (*i.e.*, zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the period of review based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region and time period, that the Department uses in making comparisons between export price (or constructed export price) and normal value for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there

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<sup>156</sup> See *Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012).

<sup>157</sup> See, e.g., *Xanthan Gum From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar From Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); or *Welded Line Pipe From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the "ratio test" assesses the extent of the significant price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (*i.e.*, the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, the Department examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative comparison method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

## B. Results of the Differential Pricing Analysis

For Xinboda, based on the results of the differential pricing analysis, the Department preliminarily finds that 28.10 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>158</sup> and does not confirm the existence of a pattern of prices that differ significantly among purchasers, regions or time periods. Thus, the results of the Cohen's *d* and ratio tests do not support consideration of an alternative to the average-to-average method. Accordingly, the Department preliminarily determines to apply the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Xinboda.

### *Export Price*

Pursuant to section 772(a) of the Act, the EP is "the price at which subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States," as adjusted under section 772(c) of the Act. The Department considers the U.S. prices of all sales by Xinboda to be EP in accordance with section 772(a) of the Act because they were the prices at which the subject merchandise was first sold before the date of importation by the exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States. We calculated EPs based on the sales price to unaffiliated purchaser(s) in the United States.

Xinboda reported that all of its U.S. sales were made on an FOB basis.<sup>159</sup> In accordance with section 772(c)(2)(A) of the Act, where appropriate, we made deductions from the sales price for various PRC expenses such as foreign inland freight, brokerage and handling. For those expenses that were provided by an ME provider and paid for in an ME currency, the Department used the reported expense. For a detailed description of all adjustments made to Xinboda's U.S. price, see Xinboda's Preliminary Analysis Memo.<sup>160</sup>

### *Value-Added Tax*

In 2012, the Department announced a change of methodology with respect to the calculation of EP and CEP to include an adjustment of any un-refunded (herein "irrecoverable") value-added tax ("VAT") in certain non-market economies in accordance with section 772(c)(2)(B) of the Act.<sup>161</sup> The Department explained that when an NME government imposes an export tax, duty, or other charge on subject merchandise, or on inputs used to produce subject merchandise, from which the respondent was not exempted, the Department will reduce the respondent's EP and

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<sup>158</sup> See Memorandum to the File, "Administrative Review of Fresh Garlic from the People's Republic of China: Calculation Memorandum for the Preliminary Results of Shenzhen Xinboda Industrial Co., Ltd.," (dated concurrently with the instant memorandum) (Xinboda Preliminary Analysis Memorandum).

<sup>159</sup> See Xinboda's Section C response, dated May 22, 2015, at C-8 and U.S. sales data file provided with Xinboda's SQR on September 1, 2015.

<sup>160</sup> See Xinboda Preliminary Analysis Memorandum.

<sup>161</sup> See *Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481 (June 19, 2012).

CEP prices accordingly, by the amount of the tax, duty or charge paid, but not rebated.<sup>162</sup> Where the irrecoverable VAT is a fixed percentage of EP or CEP, the Department explained that the final step in arriving at a tax neutral dumping comparison is to reduce the U.S. EP or CEP downward by this same percentage.<sup>163</sup>

The Chinese VAT schedule placed on the record of this review by Xinboda indicates that the standard VAT levy is zero percent and the rebate rate for subject merchandise is zero percent.<sup>164</sup> For the purposes of these preliminary results, therefore, we did not remove irrecoverable VAT from U.S. price.<sup>165</sup>

### *Normal Value*

Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if: (1) the merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(e) of the Act. When determining NV in an NME context, the Department will base NV on FOPs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. The Department's questionnaire requires that a respondent provide information regarding the weighted-average FOPs across all of the company's plants and/or suppliers that produce the merchandise under consideration, not just the FOPs from a single plant or supplier.

The Department calculated NV based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). Under section 773(c)(3) of the Act, FOPs used by Xinboda in the production of garlic include, but are not limited to, (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. The Department based NV on Xinboda's reported FOPs for materials, energy, and labor.

### *Factor Valuations*

In accordance with section 773(c) of the Act, for subject merchandise produced by Xinboda, the Department calculated NV based on the FOPs reported by Xinboda for the POR. The Department used Romanian import data and other publicly available Romanian data in order to calculate SVs for Xinboda's FOPs. To calculate NV, the Department multiplied Xinboda's reported per-unit FOP quantities by publicly available SVs.<sup>166</sup> The Department's practice when selecting the best available information for valuing FOPs is to select, to the extent practicable,

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<sup>162</sup> *Id.*; see also *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 4875 (January 30, 2014) and accompanying Issues and Decision Memorandum at Comment 5.A.

<sup>163</sup> *Id.*

<sup>164</sup> See Xinboda's Section C at 26 and Exhibit C-2 (The Interim VAT Regulation).

<sup>165</sup> *Id.*

<sup>166</sup> See Preliminary SV Memo.

SVs which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties.<sup>167</sup>

As appropriate, the Department adjusted input prices by including freight costs to render them delivered prices. Specifically, the Department added to Romanian import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where it relied on an import value. This adjustment is in accordance with the decision of the Federal Circuit in *Sigma Corp. v. United States*, 117 F.3d 1401, 1408 (Fed. Cir. 1997). Additionally, where necessary, the Department adjusted SVs for inflation and exchange rates, and the Department converted all applicable FOPs to a per-kilogram basis.

For the preliminary results, the Department valued garlic inputs using data from NISR. This source, which is from the primary surrogate country (1) is product-specific; (2) represents a broad market average; (3) is publicly available; (4) spans the POR; and (5) is exclusive of taxes and duties

For all other raw material and packing inputs, the Department used Romanian import prices reported in the Global Trade Atlas (GTA) published by Global Trade Information Services.<sup>168</sup> The record shows that data in the Romanian import statistics, as well as those from the other sources, are generally product-specific, representative of a broad market average, publicly available, contemporaneous with the POR, and tax- and duty-exclusive.<sup>169</sup>

We valued electricity based on information from the Romanian Energy Regulatory Authority Statistics<sup>170</sup> and we valued water using information from the National Regulating Authority for the Public Utility Services of Romania Statistics.<sup>171</sup> For this value, which was not contemporaneous with the POR, we adjusted for inflation using data published by the International Monetary Fund's International Financial Statistics.

We valued brokerage and handling (B&H) and truck freight using information in the World Bank's *Doing Business 2015 Romania (Doing Business Romania)* report for inland transportation and handling relating to importing and exporting a standardized cargo of goods.<sup>172</sup>

In *Labor Methodologies*, the Department determined that the best methodology to value labor is to use industry-specific labor rates from the primary surrogate country.<sup>173</sup> The Department does

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<sup>167</sup> See, e.g., *Electrolytic Manganese Dioxide From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 48195 (August 18, 2008) and accompanying Issues and Decision Memorandum at Comment 2.

<sup>168</sup> <http://www.gtis.com/GTA.htm>.

<sup>169</sup> See Exhibit 1D of Petitioners' Letter to the Department, "20<sup>th</sup> Administrative Review of Fresh Garlic from the People's Republic of China – Petitioners' Surrogate Value Comments," (June 17, 2015).

<sup>170</sup> *Id.* at Exhibit 3.

<sup>171</sup> *Id.* at Exhibit 4.

<sup>172</sup> *Id.*

<sup>173</sup> See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing The Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (*Labor Methodologies*).

not, however, preclude all other sources from evaluation for use in labor costs.<sup>174</sup> Rather, we continue to follow our practice of selecting the best available information to determine SVs for inputs such as labor. In this case, we valued labor using data reported by the International Labor Organization Statistics (ILOSTAT) for the manufacture of food products in Romania. The ILOSTAT data, is from 2013, and is therefore contemporaneous with part of the POR.<sup>175</sup>

To value factory overhead, selling, general and administrative expenses (“SG&A”), and profit, we used information from the 2014 financial statements of SC Legume Fructe Buzau S.A. and SC Boromir PROD SC, two Romanian food processors.<sup>176</sup> From these Romanian financial statements we were able to determine factory overhead as a percentage of the total raw materials, labor, and energy (ML&E) costs; SG&A as a percentage of ML&E plus overhead (*i.e.*, cost of manufacture); and the profit rate as a percentage of the cost of manufacture plus SG&A.

For a complete listing of all the inputs and a detailed discussion about our SV selections, *see* the Preliminary SV Memo.

#### *Currency Conversion*

Where necessary, the Department made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

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<sup>174</sup> See *Steel Wire Garment Hangers From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012–2013*, 79 FR 65616 (November 5, 2014) and Issues and Decision Memorandum at 11.

<sup>175</sup> See Preliminary SV Memo.

<sup>176</sup> See Letter from Petitioners, “20<sup>th</sup> Administrative Review of Fresh Garlic from the People’s Republic of China - Petitioners’ Submission of Additional Romanian Surrogate Re: Value Information,” at Attachments 1 and 2 (November 2, 2015).

**V. RECOMMENDATION**

We recommend applying the above methodology for these preliminary results.

✓  
Agree

Disagree

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

11/30/15  
Date