



A-570-831  
Administrative Review  
POR: 11/01/2014-10/31/2015  
Public Document  
E&C Office VII: KW/AC

June 7, 2017

MEMORANDUM TO: Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Results of  
Antidumping Duty Administrative Review: Fresh Garlic from the  
People's Republic of China; 2014-2015

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## SUMMARY

The Department of Commerce (Department) analyzed the case briefs and rebuttal briefs submitted by interested parties in the 21<sup>st</sup> administrative review of the antidumping duty order on fresh garlic from the People's Republic of China (PRC). As a result of this analysis, we have made changes to the *Preliminary Results*. We recommend that you approve the positions described in the "Decisions of the Issues" section of this memorandum.

## BACKGROUND

On December 5, 2016, the Department published the *Preliminary Results* of this administrative review.<sup>1</sup> The only respondent which fully cooperated in this review is Shenzhen Xinboda Industrial Co., Ltd. (Xinboda).<sup>2</sup> We preliminarily found that the two mandatory respondents, Qingdao Tiantaixing Foods Co., Ltd (QTF) and Harmoni Spice Co. Ltd. (Harmoni) each failed to cooperate to the best of its ability. As a result, we applied adverse facts available (AFA) to the QTF-entity,<sup>3</sup> and preliminarily found that Harmoni did not rebut the presumption that it is part of

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<sup>1</sup> See *Fresh Garlic from the People's Republic of China: Preliminary Results and Partial Rescission of the 21<sup>st</sup> Administrative Review; 2014-2015*, 81 FR 89050 (December 9, 2016) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM).

<sup>2</sup> See Memorandum, "Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Selection of Additional Respondent" (August 4, 2016).

<sup>3</sup> At the time of the *Preliminary Results*, the QTF-entity included Qingdao Tiantaixing Foods Co., Ltd. (QTF); Qingdao Tianhefeng Foods Co., Ltd. (QTHF); Qingdao Beixing Trading Co., Ltd. (QBT); Qingdao Lianghe International Trade Co., Ltd. (Lianghe); and Qingdao Xintianfeng Foods Co., Ltd. (QXF) (collectively, the QTF-entity). See PDM at 10-11.

the PRC-wide entity. Further, we found that 10 companies made no shipments during the POR and that 5 companies qualified for separate rate status.

Following the *Preliminary Results*, Avrum Katz, owner of Boxcar Farm and member of the New Mexico Garlic Growers Coalition (NMGGC),<sup>4</sup> withdrew from the NMGGC.<sup>5</sup>

On December 15, 2016, Shenzhen Yuting Foodstuff Co., Ltd. (Yuting) submitted a letter clarifying that Yuting did not export any subject merchandise to the United States during the period of review (POR).<sup>6</sup>

On December 15, 2016, the Department released customs entry documentation for Xinboda,<sup>7</sup> and on December 30, 2016, the petitioners<sup>8</sup> submitted rebuttal information.<sup>9</sup> The petitioners and Xinboda submitted comments regarding the customs entry documentation for Xinboda, on January 4, 2017, and January 6, 2017, respectively.<sup>10</sup>

On January 9, 2017, the petitioners, Harmoni, and Xinboda each filed a request for a hearing.

On February 2, 2017, and February 10, 2017, Avrum Katz submitted various allegations pertaining to the NMGGC.<sup>11</sup> Between February 3, 2017, and February 9, 2017, the NMGGC, and Harmoni submitted responses to the February 2, 2017, Boxcar Farm Letter.<sup>12</sup> On February

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<sup>4</sup> On June 3, 2016, the Department determined that the members of the NMGGC, Avrum Katz of Boxcar Farm and Stanley Crawford of El Bosque Farm, are domestic producers of fresh garlic and thus have standing to request administrative reviews of foreign exporters. *See* Memorandum, “Whether the members of the New Mexico Garlic Growers Coalition (NMGGC) are U.S. Domestic Producers of Fresh Garlic: Administrative Review of Fresh Garlic from the People’s Republic of China (PRC)” (June 3, 2016).

<sup>5</sup> *See* NMGGC’s Letter, “21<sup>st</sup> Administrative Review of Fresh Garlic from the People’s Republic of China – Withdrawal of Avrum Katz from the New Mexico Garlic Growers Coalition (NMGGC)” (December 14, 2016).

<sup>6</sup> *See* Yuting’s Letter, “Fresh Garlic from the People’s Republic of China – Clarification Letter on No Shipments Certification in connection with the 21<sup>st</sup> Antidumping Administrative Review on Behalf of Shenzhen Yuting Foodstuff Co., Ltd.” (December 14, 2016) (Yuting’s Letter 12/14/16).

<sup>7</sup> *See* Memorandum, “Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China: Shenzhen Xinboda Industrial Co., Ltd. (Xinboda) Customs Entry Documentation” (December 15, 2016) (Xinboda’s CBP Documents 12/15/16).

<sup>8</sup> The petitioners are the Fresh Garlic Producers Association, and its individual members: Christopher Ranch L.L.C., The Garlic Company, Valley Garlic, and Vessey and Company, Inc.

<sup>9</sup> *See* Petitioners’ Letter, “21<sup>st</sup> Administrative Review of the Antidumping Order Fresh Garlic from the People’s Republic of China – Petitioners’ Submission of GACC Export Data and U.S. Import Statistics to Rebut, Clarify, Or Correct Information Contained in CBP Entry Documents Concerning Xinboda’s Shipments” (December 30, 2016).

<sup>10</sup> *See* Petitioners’ Letter, “21<sup>st</sup> Administrative Review of the Antidumping Order Covering Fresh Garlic from the People’s Republic of China – Petitioners’ Comments on the Prices Reported by Xinboda for its POR Sales” (January 4, 2017); *see also* Xinboda’s Letter, “Fresh Garlic from the People’s Republic of China – Request to Reject Petitioners’ December 30, 2016 and January 4, 2016 Filings; and Request to Extend Briefing Schedule” (January 6, 2017).

<sup>11</sup> The Department rejected Boxcar Farm’s original letter on procedural grounds. Boxcar Farm resubmitted a corrected submission which included its allegation. *See* Department Letter, “21<sup>st</sup> Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China: Request for Removal of Untimely New Factual Information” (February 10, 2017); *see also* Boxcar Farm’s Letter, Untitled (February 10, 2017) (Boxcar Farm’s Letter 2/10/17).

<sup>12</sup> *See* NMGGC’s Letter, “Request that the Department reject letter filed by Mr. Avrum Katz dated February 2, 2017 (Barcode: 3540560)” (February 3, 2017); *see also* NMGGC’s Letter “21<sup>st</sup> Administrative Review of Fresh Garlic from the People’s Republic of China – Stanley Crawford Declaration in Response to Avrum Katz’ Request for Reconsideration Filed on February 2, 2017)(Barcode: 3540460-01)” (February 6, 2017); *see also* Harmoni’s Letter

14, 2017, the Department established the deadline to comment and rebut information contained in the February 10, 2017, Boxcar Farm Letter.<sup>13</sup> Between February 20, 2017, and March 3, 2017, NMGGC, Avrum Katz, and Harmoni submitted new factual information and comments regarding allegations against NMGGC and its counsel.<sup>14</sup>

On February 15, 2017, the Department placed documents on the record of the instant administrative review from the 19<sup>th</sup> administrative review (POR 11/01/2012-10/31/2013) regarding the alleged involvement of Hebei Golden Bird Trading Co., Ltd. (Golden Bird) and the QTF-entity in a scheme to evade antidumping duties during the 19<sup>th</sup> administrative review.<sup>15</sup> Harmoni and the petitioners commented on February 21, 2017.<sup>16</sup>

On March 7, 2017, the Department established the final deadline for submitting factual information pertaining to the allegations involving NMGGC and its counsel.<sup>17</sup> Between March

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“Comments on Robert T. Hume’s Letter of February 3, 2017; POR 21 Administrative Review of Zhengzhou Harmoni Spice Co., Ltd.; Antidumping Duty Order on Fresh Garlic from the People’s Republic of China (A-570-831)” (February 6, 2017); *see also* NMGGC’s Letter “21<sup>st</sup> Administrative Review of Fresh Garlic from the People’s Republic of China – Further Rebuttal to Letter filed by Avrum Katz dated February 2, 2017 (Barcode: 3540460) and Rebuttal to Submission filed on behalf of Zhengzhou Harmoni Spice Co., Ltd. dated February 6, 2017 – Filed on Behalf of the NMGGC” (February 9, 2017).

<sup>13</sup> The Department’s memorandum also considered responses to Boxcar Farm’s original February 2, 2017 letter to be timely pursuant to 19 CFR 351.301(c)(5)(ii). *See* Memorandum, “21<sup>st</sup> Administrative Review of the Antidumping Duty Order of Fresh Garlic from the People’s Republic of China (PRC): Deadline for Rebuttal to Allegations.

<sup>14</sup> *See* NMGGC’s Letter “21<sup>st</sup> Administrative Review of Fresh Garlic from the People’s Republic of China – Rebuttal to letter filed by Avrum Katz dated February 10, 2017 (Barcode: 3542761) and Request the Department Conduct a 18 USC 1001 Review – Filed on Behalf of the NMGGC” (February 20, 2017) (NMGGC’s Letter 2/20/17); *see also* Boxcar Farm Letter, “Rebuttal to February 6, 2017 Stanley Crawford Declaration and February 9, 2017 Robert T. Hume submission in 21<sup>st</sup> Administrative Review of Fresh Garlic from the People’s Republic of China” (February 21, 2017) (Boxcar Farm’s Letter 2/21/17); *see also* Harmoni’s Letter, “New Factual Information of Zhengzhou Harmoni Spice Co., Ltd. in Twenty First Administrative Review of Antidumping Duty Order of Fresh Garlic from the People’s Republic of China (A-570-831), To Rebut Factual Information Submitted by NMGGC on February 6, 2017 and February 9, 2017, and to Clarify Factual Information Submitted by Avrum Katz of Boxcar Farms on February 2, 2017, Refined on February 10, 2017” (February 21, 2017) (Harmoni’s Letter 2/21/17); *see also* NMGGC’s Letter, “21<sup>st</sup> Administrative Review of Fresh Garlic from the People’s Republic of China – Submission Addressing Letters filed by Zhengzhou Harmoni Spice on February 21, 2017 and the letter filed by Avrum Katz dated February 21, 2017 – Filed on Behalf of the NMGGC” (February 27, 2017) (NMGGC’s Letter 2/27/17); *see also* Harmoni’s Letter, “Request to Reject All NMGGC Factual Submissions for Failing to Comply with section 351.303(g) Company Certification Requirements Antidumping Duty Order on Fresh Garlic from the People’s Republic of China (A-570-831)” (March 3, 2017) (Harmoni’s Letter 3/3/17).

<sup>15</sup> On December 20, 2016, the Department placed documents from the instant administrative review on the record for the nineteenth administrative review. Interested parties submitted rebuttal on the nineteenth administrative review, which was placed on the record of the underlying administrative review for comment. *See* Memorandum, “Placing Documents on the Record of the 21<sup>st</sup> Antidumping Duty Administrative Review of Fresh Garlic from the People’s Republic of China (PRC)” (February 14, 2017).

<sup>16</sup> *See* Harmoni’s Letter, “Harmoni’s Response to Golden Bird’s January 12, 2017 Rebuttal Comments to Petitioners’ December 30, 2016 Submission in the POR 19 Remand proceeding as Placed on the Record by the Department in POR 21 Antidumping Duty Order on Fresh Garlic from the People’s Republic of China (A-570-831); *see also* Petitioners’ Letter, “21<sup>st</sup> Administrative Review of the Antidumping Order Covering Fresh Garlic from the People’s Republic of China – Petitioners’ Submission of Comments from the Remand Segment of AR 19” (February 21, 2017).

<sup>17</sup> *See* Memorandum, “21<sup>st</sup> Administrative Review of the Antidumping Duty Order on Garlic from the People’s Republic of China: Deadline for Factual Information and Case Briefs” (March 7, 2017) (March 7, 2017 Memorandum).

8, 2017, and March 9, 2017, NMGGC, Boxcar Farm, and Harmoni submitted information regarding these allegations.<sup>18</sup> On March 15, 2017, and March 22, 2017, Cynthia Ferebee Medina filed untimely allegations, which were rejected by the Department.<sup>19</sup>

On March 15, 2017, we issued a memorandum extending these *Final Results* from April 10, 2017, to June 7, 2017.<sup>20</sup>

On March 7, 2017, the Department issued a briefing schedule for issues pertaining to Boxcar Farm, El Bosque Farm, Golden Bird, Harmoni, the NMGGC, the QTF-entity, and surrogate country and surrogate values.<sup>21</sup> On March 24, 2017, the NMGGC, Xinboda, the QTF-entity, the petitioners, and Harmoni, submitted case briefs regarding these issues.<sup>22</sup> On March 31, 2017, the NMGGC, Xinboda, the petitioners, and Harmoni submitted rebuttal briefs.<sup>23</sup>

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<sup>18</sup> See NMGGC's Letter, "21<sup>st</sup> Administrative Review of Fresh Garlic from the People's Republic of China – Response to March 3, 2017, submission filed on behalf of Zhengzhou Harmoni Spice Co., Ltd. and Harmoni International Spice Inc. – Filed on Behalf of the NMGGC" (March 8, 2017) (NMGGC's Letter 3/8/17); see also Boxcar Farm's Letter, "21<sup>st</sup> Administrative Review of Fresh Garlic from the People's Republic of China – New Factual Information in Response to the Department's March 7, 2017 Memorandum and the March 8, 2017 submission filed on behalf of Stanley Crawford and the NMGGC. This response is filed on behalf of Avrum Katz, owner of Boxcar Farm." (March 9, 2017) (Boxcar Farm's Letter 3/9/2017); see also Harmoni's Letter, "New Factual Information in Response to Memorandum of March 7, 2017 submitted by Zhengzhou Harmoni Spice Co., Ltd. in Twenty First Administrative Review of Antidumping Duty Order on Fresh Garlic from the People's Republic of China (A-570-831)" (March 9, 2017) (Harmoni's Letter 3/9/17); see also NMGGC's Letter, "21<sup>st</sup> Administrative Review of Fresh Garlic from the People's Republic of China – Factual Information to Rebut, Clarify or Correct any Submissions Accepted on the Record Between February 3, 2017, and March 3, 2017, Pertaining to Allegations Regarding Boxcar Farm, El Bosque Farm, Hebei Golden Bird Trading Co., Ltd. ("Golden Bird"), Zhengzhou Harmoni Spice Co., Ltd. ("Harmoni") and the New Mexico Garlic Growers Coalition ("NMGGC") - Filed on Behalf of the NMGGC" (March 9, 2017) (NMGGC's Letter 3/9/17).

<sup>19</sup> See Department Letter, "21<sup>st</sup> Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Request for Removal of Untimely New Factual Information" (March 17, 2017); see also Memorandum, "21<sup>st</sup> Administrative Review of the Antidumping Duty Order of Fresh Garlic from the People's Republic of China (PRC): Reject and Delete Submissions" (March 29, 2017).

<sup>20</sup> See Memorandum, "Fresh Garlic from the People's Republic of China – 21<sup>st</sup> Administrative Review (2014-2015): Extension of Deadline for the Final Results of the Review" (March 15, 2017).

<sup>21</sup> See (March 7, 2017 Memorandum)

<sup>22</sup> See NMGGC's Case Brief, "Case Brief Filed on Behalf of the New Mexico Garlic Growers Coalition and El Bosque Farm in the 21<sup>st</sup> Administrative Review of Fresh Garlic from the People's Republic of China" (March 24, 2017) (NMGGC's Case Brief); see also Xinboda's First Case Brief, "Fresh Garlic from the People's Republic of China – Case Brief" (March 24, 2017) (Xinboda's First Case Brief); see also QTF's Case Brief, "Case Brief of Qingdao Tiantaixing Foods Co., Ltd.," (March 24, 2017) (QTF's Case Brief); see also Petitioners' First Case Brief, "Fresh Garlic from the People's Republic of China – Petitioners' Case Brief," (March 24, 2017) (Petitioners' First Case Brief); see also Harmoni's Case Brief, "Harmoni Administrative Case Brief: 21<sup>st</sup> Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China (A-570-831)," (March 24, 2017). (Harmoni's Case Brief).

<sup>23</sup> See NMGGC's Rebuttal Brief, "Rebuttal Brief – Filed on Behalf of the New Mexico Garlic Growers Coalition and El Bosque Farm in the 21<sup>st</sup> Administrative Review of Fresh Garlic from the People's Republic of China," (March 31, 2017) (NMGGC's Rebuttal Brief); see also Xinboda's First Rebuttal Brief, "Fresh Garlic from the People's Republic of China – Letter Rebuttal Brief" (March 31, 2017) (Xinboda's First Rebuttal Brief); see also Petitioners' First Rebuttal Brief, "Petitioners' Rebuttal Brief" (March 31, 2017) (Petitioners' First Rebuttal Brief); see also Harmoni's Rebuttal Brief, "Harmoni's Rebuttal Brief: 21<sup>st</sup> Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China (A-570-831)" (March 31, 2017) (Harmoni's Rebuttal Brief).

The petitioners withdrew their April 18, 2016, request for verification on March 22, 2017.<sup>24</sup> On March 31, the Department established the deadlines for submitting case briefs pertaining to the remaining issues.<sup>25</sup> On April 11, 2017, Xinboda, Jinxiang Hejia Co., Ltd. (Hejia), and the petitioners submitted case briefs,<sup>26</sup> and on April 18, 2017, Xinboda and the petitioners submitted rebuttal briefs.<sup>27</sup>

On April 28, 2017, the Department met with the petitioners' representatives.<sup>28</sup> On May 2, 2017, we issued a memorandum outlining the hearing schedule, which ultimately occurred on May 11, 2017.<sup>29</sup>

## SCOPE OF THE ORDER

The products covered by the order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay. The scope of the order does not include the following: (a) Garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed. The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings: 0703.20.0000, 0703.20.0005, 0703.20.0010, 0703.20.0015, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, 0711.90.6500, 2005.90.9500, 2005.90.9700, 2005.99.9700, of the Harmonized Tariff Schedule of the United States (HTSUS).<sup>30</sup>

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive. In order to be excluded from the order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared

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<sup>24</sup> See Petitioners' Letter, "21<sup>st</sup> Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – Petitioners' Withdrawal of Request for Verification" (March 22, 2017).

<sup>25</sup> See Memorandum, "21<sup>st</sup> Administrative Review of the Antidumping Duty Order on Garlic from the People's Republic of China: Deadline for Case Briefs" (March 31, 2017); see also Memorandum "21<sup>st</sup> Administrative Review of the Antidumping Duty Order on Garlic from the People's Republic of China: Deadline for Case Briefs Regarding Jinxiang Hejia Co., Ltd." (March 31, 2017).

<sup>26</sup> See Xinboda's Second Case Brief, "Case Brief of Shenzhen Xinboda Industrial Co. Ltd. ("Xinboda") Re: Data Issues" (April 11, 2017) (Xinboda's Second Case Brief); see also Hejia's Case Brief, "Case Brief Jinxiang Hejia Co., Ltd." (April 11, 2017) (Hejia's Case Brief); see also Petitioners' Second Case Brief, "Petitioners' Case Brief Concerning Shenzhen Xinboda Industrial Co., Ltd" (April 11, 2017) (Petitioners' Second Case Brief).

<sup>27</sup> See Xinboda Second Rebuttal Brief, "Rebuttal Brief of Shenzhen Xinboda Industrial Co., Ltd. ("Xinboda") Re: Data Issues" (April 18, 2017) (Xinboda's Second Rebuttal Brief); see also Petitioners' Second Rebuttal Brief, "Petitioners' Second Case Rebuttal Brief" (April 18, 2017) (Petitioners' Second Rebuttal Brief).

<sup>28</sup> See Memorandum, "21<sup>st</sup> Administrative Review of Fresh Garlic from the People's Republic of China: Ex-Parte Meeting with Fresh Garlic Producers Association (FGPA) Members" (April 28, 2017).

<sup>29</sup> See Department Letter, "Antidumping Duty Administrative Review of Garlic from the People's Republic of China (PRC)" (May 2, 2017).

<sup>30</sup> See *Antidumping Duty Order: Fresh Garlic from the People's Republic of China*, 59 FR 59209 (November 16, 1994).

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 (CBP) to that effect.

### **FINAL DETERMINATION OF NO SHIPMENTS**

In the *Preliminary Results*, we noted that each company listed in Appendix III of the *Federal Register* notice timely filed a “no shipment” certification stating that it had no entries of subject merchandise during the POR.<sup>31</sup> The Department subsequently asked CBP to conduct a query on potential shipments made by these companies during the POR; CBP provided evidence that indicated that one of the companies, Yuting, had shipments during the POR.<sup>32</sup>

Following the *Preliminary Results*, Yuting clarified that the shipment reported by the CBP data query was sold in the 20<sup>th</sup> administrative review. Yuting reported this shipment in the previous administrative review and clarified that the discrepancy occurred based on Yuting’s date of sale reporting. The Department finds that it reviewed this shipment in the prior review. Accordingly, we intend to apply the rate determined in the previous review to the shipment (*See* Comment 3 below).

For the remaining companies, the Department reviewed the certifications and analyzed the CBP information in the *Preliminary Results* to preliminarily determine that those companies listed in Appendix III did not have any reviewable transactions during the POR. There is no information on the record to warrant reconsideration of our preliminary findings. As such, for these *Final Results*, the Department will continue to find that these 11 companies had no shipments during the POR.

### **PRC-WIDE ENTITY**

In the *Preliminary Results*, the Department stated that we had preliminarily determined that nine companies were considered to be a part of the PRC-wide entity.<sup>33</sup> However, the Department mistakenly calculated nine, when only eight companies failed to rebut the presumption of government control and were preliminarily determined to be a part of the PRC-wide entity.<sup>34</sup> For the *Final Results*, the Department has rescinded its review of two of these companies, Harmoni and Jinxiang Jinma Fruits Vegetables Products Co., Ltd. (Jinxiang Jinma) (*see* Comment 1 below). In addition, as stated above, we have concluded that Yuting’s shipment was reviewed in the prior review.

As discussed in Comment 4 below, the Department preliminarily determined that the QTF-entity rebutted the presumption of government control. However, in these final results, we have revisited that decision, and concluded that the QTF-entity did not demonstrate its eligibility for a separate rate. Moreover, the Department is concluding that the QTF-entity includes Golden Bird

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<sup>31</sup> *See Preliminary Results* at Appendix III.

<sup>32</sup> *See* PDM at 9.

<sup>33</sup> *Id.* at 13-14.

<sup>34</sup> These eight companies are: Harmoni; Golden Bird; Yuting; Jinxiang Jinma Fruits Vegetables Products Co., Ltd. (Jinxiang Jinma); Jining Yongjia Trade Co., Ltd. (Yongjia), Jinxiang Hejia Co., Ltd. (Hejia); Shandong Zhifeng Foodstuffs Co., Ltd. (Zhifeng); Zhong Lian Farming Product (Qingdao) Co., Ltd. (Zhong Lian)

(see Comment 4 below). Accordingly, the Department finds that five companies failed to rebut the presumption of government control and are a part of the PRC-wide entity.<sup>35</sup>

## DISCUSSION OF THE ISSUES

### **Comment 1: Whether the Department Should Rescind the Review of Harmoni and Jinxiang Jinma**

The NMGGC argues that the record shows that its members are domestic interested parties and had standing to file a review request for Harmoni,<sup>36</sup> and that the Department cannot rescind the review of Harmoni.<sup>37</sup> Harmoni argues that the Department is required to rescind the review if it determines that the NMGGC request has been tainted by the NMGGC's misrepresentations or that the continuation of this review would undermine the integrity of the administrative review.<sup>38</sup> Petitioners argue that the Department has already found that Mr. Crawford's communication with QTF shows that he coordinated with the QTF-entity during the POR.<sup>39</sup> Further, they argue that the Department should rescind the review with respect to Harmoni to protect the integrity of its proceedings from abuse of its review request procedures.<sup>40</sup>

There are numerous individuals and entities relevant to the discussion below. For clarity, we describe them here at the outset:

**NMGGC:** When it requested an administrative review of Harmoni, the NMGGC consisted of Stanley Crawford, owner and operator of El Bosque Farm of Dixon, New Mexico, and Avrum Katz, owner and operator of Boxcar Farm in Penasco, New Mexico. Mr. Katz withdrew from the NMGGC on December 13, 2016, leaving Mr. Crawford as the sole member of the NMGGC.

**Hume & Associates LLC (H&A):** H&A is the law firm that represents both the NMGGC and several Chinese exporters of garlic.

**Robert T. Hume:** Mr. Hume, of H&A, is counsel for the NMGGC. Over the course of the garlic proceeding, Mr. Hume has been counsel for several Chinese exporters of garlic, including QTF. Mr. Hume withdrew his representation of QTF during this administrative review.

**Joey Montoya:** Mr. Montoya was an attorney employed with H&A and was counsel for the NMGGC at the outset of this administrative review. Mr. Montoya withdrew as counsel for the NMGGC on March 8, 2016.

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<sup>35</sup> These five companies are: the QTF-entity (including Golden Bird); Yongjia; Hejia; Zhifeng; Zhong Lian.

<sup>36</sup> We note that the NMGGC's review request included Harmoni and Jinxiang Jinma, but we only selected Harmoni as a mandatory respondent. See NMGGC's Case Brief at 11-12 (citing section 771(9) of the Act).

<sup>37</sup> See NMGGC's Rebuttal Brief at 19

<sup>38</sup> See Harmoni's Case Brief at 54 (citing *US Magnesium LLC v. United States*, 895 F. Supp. 2d 1319 (CIT 2013) (*US Magnesium*); see also *FGPA II*; see also *Home Prods. Int'l, Inc. v. United States*, 633 F. 3d 1369 (Fed. Cir. 2011) (*Home Prods.*) at 1381; see also *Lightweight Thermal Paper from Germany: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 23220 (April 18, 2013) (*Lightweight Thermal Paper from Germany*); see also *Papierfabrik* at 1379-1380; see also *Ad Hoc Shrimp 2015* at 1356-1357; see also *Wooden Bedroom Furniture*).

<sup>39</sup> See Petitioners' First Case Brief at 30 (citing to PDM at 7).

<sup>40</sup> *Id.*

**Cynthia Medina:** Ms. Medina was the office manager of H&A from November 2015 to November 2016.

**Huamei Consulting:** Huamei Consulting is a Chinese consulting firm working with several Chinese garlic exporters, including QTF and Golden Bird. Huamei Consulting works with H&A.

**Wang Ruopeng:** Mr. Wang is the owner of Golden Bird and Huamei Consulting.

**Bai Wenxuan:** Mr. Bai (also known as Jack Bai) owns or controls various Chinese garlic exporters, including Golden Bird and QTF.

We have separated the parties' extensive comments into various categories and summarize them below.

*A. Whether the NMGGC and Mr. Hume Made False Statements and Material Misrepresentations on the Record of this Review*

**Harmoni Argues**

- The NMGGC has consistently attempted to conceal and misrepresent material facts in this review.<sup>41</sup>
  - Directly or indirectly, Mr. Hume's Chinese clients paid for Mr. Crawford's and Mr. Hume's participation in the review process.<sup>42</sup>
  - Mr. Crawford withdrew his POR 20 review request at the behest of Mr. Hume and his Chinese clients.<sup>43</sup>
  - There is an inherent conflict of interest between the position of domestic garlic producers (NMGGC) and the Chinese exporters which Mr. Hume

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<sup>41</sup> See Harmoni's Case Brief at 56-59.

<sup>42</sup> *Id.* at 59-60; Doc 20; Doc 33; Doc 35; (citing NMGGC's Letter 3/9/17 at 5, where Mr. Hume admitted to paying Mr. Crawford \$50,000; *see also* Harmoni's Letter 2/21/17 at Ex. 6, where Mr. Hume requests monthly payment from Huamei Consulting).

<sup>43</sup> See Harmoni's Case Brief at 61 (citing NMGGC's Letter, "Fresh Garlic from the People's Republic of China, Supplemental Comments for the 21<sup>st</sup> Administrative Review on behalf of the New Mexico Garlic Growers Coalition" (December 3, 2015) (NMGGC's Letter 12/3/15) at 4-5; *see also* QTF's Letter, "Fresh Garlic from the People's Republic of China, 21<sup>st</sup> Administrative Review – Comments on "Harmoni Fraud Allegations" filed on behalf of Qingdao Tiantaixing Foods Co., Ltd." (April 18, 2016) (QTF's Letter 4/18/16) at Ex. 1; *see also* QTF's Letter, "Fresh Garlic from the People's Republic of China, 21<sup>st</sup> Administrative Review – Response to Comments of Harmoni dated April 13, 2016, -- filed on behalf of Qingdao Tiantaixing Foods Co., Ltd." (April 25, 2016) at 3 ("{Mr.} Crawford withdrew his review request based on reports the undersigned received from China that Harmoni described in Ex. 39 and 47 of Harmoni's March 31 {sic} filing")). *See also* fn 94 for a "detailed discussion of the facts and circumstances surrounding this withdrawal, which reveal that Mr. Hume knew or should have known, that his client, QTF, was falsifying documents submitted to Chinese CIQ authorities, the Department of U.S. Customs.



- represented simultaneously during this POR, between March 9, 2016 and July 28, 2016.<sup>44</sup> The “Chinese wall”<sup>45</sup> at Mr. Hume’s law firm never existed.
- Mr. Hume’s claim that he received no payment for requesting a review of Harmoni is contradicted by substantial record evidence.<sup>46</sup> The payments Mr. Hume received from his Chinese clients, even if characterized as being for “other services,” allowed Mr. Hume to use the NMGGC as an agent.<sup>47</sup>
  - Mr. Hume’s material omissions and misrepresentations to Mr. Katz constitute the same type of misinformation between one party and another, which resulted in the Department’s decision to rescind the *Wooden Bedroom Furniture* review.<sup>48</sup> Likewise, the Department should rescind the review here. Moreover, Mr. Katz’s decision to become a whistleblower, and his submission of supporting evidence, undermine the credibility of the NMGGC’s submissions, including its review request of Harmoni.<sup>49</sup>
  - Mr. Hume, aware of the Chinese Inspection Quality (CIQ) Bureau investigation into his client for falsifying documents, continued to certify the accuracy of QTF’s submissions.<sup>50</sup>

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<sup>44</sup> See Harmoni’s Case Brief at 69-71 (citing NMGGC’s Letter 3/9/16; see also QTF’s Letter 6/22/16; see also QTF’s Letter 7/28/16; see also *Premier Trading, Inc. v. United States*, Slip Op. 16-13 (CIT 2016) (*Premier Trading*); (“For example, in the NMGGC’s submission of July 22, 2016, Mr. Hume attached the FGPA’s January 27, 2016 surrogate value submission that provided surrogate values from Romania in the Jinxiang Huameng new shipper review. Barcode 3490038. Then, on May 16, 2016, Mr. Hume wearing his QTF hat urged that the Department select Mexico as the most appropriate surrogate country, in direct conflict with the FGPA. Barcode 3469108 Moreover, as counsel to Jinxiang Huameng in its new shipper review, Mr. Hume wearing the Huameng hat, by letter dated January 25, 2016, advocated use of Thailand as the surrogate country, in direct conflict with the purported desire of his clients, the NMGGC members who would like the Department to believe that they support Romania as the choice of a surrogate country. Barcode 3435013.”)).

<sup>45</sup> See Harmoni’s Case Brief at 61-62 and fn 118-123, fn 131-136 (citing NMGGC’s Letter 12/13/15 at 4-5; see also NMGGC’s Letter 1/9/16 at 2)

<sup>46</sup> *Id.* at 62-65 (citing QTF’s Letter 4/18/16 at Ex. 1 and Ex. 5; see also NMGGC’s Letter 3/30/16 at 2; see also NMGGC’s Letter 5/3/16 at 2; see also NMGGC’s Letter 2/9/17 at 5, 16, and 19; see also Harmoni’s Letter 3/29/2016 Ex. 2, 4, and 5; see also Department Letter 2/14/17 at Ex. 2; see also NMGGC’s Letter 3/19/17 at 13 and Ex. 7; see also Harmoni’s Letter 2/21/17 at Ex. 6 (email exchanges between Mr. Hume, including Cynthia Medina, and Huamei Consulting that provided a reconciliation of fees transmitted to Mr. Hume. Finally, Mr. Hume received payments of his own firm’s work as well as public relations costs paid for by Huamei Consulting on behalf of NMGGC)).

<sup>47</sup> *Id.* at 64 (“Mr. Hume, a man of admittedly modest means, asks the Department to believe that he paid for {...} (1) payments to Messrs. Crawford and Katz totaling at least \$65,000, (2) overhead relating to two offices in New Mexico – including but not limited to staff (*e.g.* Mr. Montoya, Ms. Medina and others), (3) expenses relating to Messrs. Crawford and Katz’s trip to Washington to meet *ex parte* with the Department, (4) setting up a new “consulting” entity that, *inter alia*, imported garlic harvesting equipment from China, and (5) fees that will be due his recently added co-counsel in POR 21.”)

<sup>48</sup> See Harmoni’s Case Brief at 66-67 (citing Boxcar Farm’s Letter 2/10/17; see also Boxcar Farm’s Letter 2/21/17 at 2; see also Boxcar Farm’s Letter 3/9/17; see also NMGGC’s Letter 3/9/17 at 17 and Ex. 4; see also Harmoni’s Letter 3/9/17 at Ex. 1).

<sup>49</sup> See Harmoni’s Rebuttal Brief at 9.

<sup>50</sup> See Harmoni’s Case Brief at 59-75 (“These statements include: (1) “QTF does not have any affiliated producer of the merchandise under consideration.” (2) “QTF has no intermediate parties involved in the production of the merchandise during the POR.” (3) “This question is not applicable since QTF produced the merchandise under consideration and sold that merchandise to the United States.” (4) “Qingdao Tiantaixing Foods Co., Ltd. (“QTF”) had one producer for the merchandise under consideration, identified below, and that producer will be providing

- The members of the NMGGC did not provide the Department with verifiable production records for garlic harvested during the POR.<sup>51</sup>

### Petitioners Argue

- In securing the withdrawal of Mr. Crawford’s AR 20 review request of Harmoni at the request of Chinese producers, Mr. Hume breached his ethical duty to his client, Mr. Crawford, and therefore, undermined the credibility of all of his statements in this segment.<sup>52</sup>
- Information on this record further confirms that Mr. Crawford did not withdraw his request in Garlic 20 because he had been intimidated by private investigators sent to inspect his facility and pry into his business, as he had claimed previously.<sup>53</sup> Rather, Mr. Crawford withdrew his request because Mr. Hume’s Chinese clients wanted the withdrawal to happen.<sup>54</sup>
  - “Harmoni’s filing of its China CIQ complaint against QTF forced the QTF-entity to offer to withdraw the AR 20 review request if Harmoni withdrew its CIQ complaint.”<sup>55</sup>

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information for the section D questions.” (5) “QTF produced the merchandise under consideration at its sole facility during the POR.” (6) “QTF produced all the merchandise under consideration for sales during the POR on site. The manufacturing facility for QTF is located at West Wangyi Village, Madian Town, Jiaozhou, Qingdao City, Shandong Province, China.” (7) “As stated in the questionnaire response of Qingdao Tiantaixing Foods Co., Ltd. (“QTF”), QTF was the processor and packer, as well as the exporter, of all the subject fresh garlic at issue sold and shipped to the U.S. during the POR.” (emphasis in original) (8) “QTF maintains that regardless of any inconsistencies or failures to adhere to the AQSIQ, QTF was the sole producer of all the subject merchandise during the POR.” (9) “QTF maintains that it did produce the merchandise.” (10) “Contrary to FGPA’s claim, QTF provided complete and accurate explanation supporting the fact QTF was the sole producer of all subject merchandise QTF exported during the POR.” (11) “Regardless of any inconsistencies or failures to adhere to the letter of AQSIQ, QTF was the sole producer of all the subject merchandise during the POR.” (12) “There is no dispute that QTF was the exporter. QTF provided copies of company records maintained in connection with the daily course of its business activities and in accordance with GAAP. These records confirm that QTF produced all the subject garlic. QTF certified its responses.” (13) “QTF confirmed that QTF was the sole processor, irrespective of the CIQ certificates.” (14) “While the Department apparently did not accept QTF’s answers, the fact is QTF did process and export all the garlic reported in its SAQR.” (15) “QTF provided a complete overview of its operations with records confirming that it was the processor of subject garlic it sold to the United States.” (16) “QTF has no affiliates and used no subcontractors. Its sole processing facility is in Qingdao City.”)

<sup>51</sup> See Harmoni’s Case Brief at 75-76, fn 143-144 (citing Harmoni’s Letter 11/28/16 at 18-36, Ex. 1; see also NMGGC’s Letter 3/9/17 at Ex. 4; see also, e.g. *Foshan Shunde Yongjian Housewares & Hardware Co. v. United States*, 163 F. Supp 3d. 1313 (CIT 2016) (*Foshan Shunde 2016*); see also *Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Final Results of Antidumping Duty Administrative Review*, 76 FR 36086 (June 21, 2011) (*Welded Steel Pipe from Mexico*) at Comment 4; see also *Grain-Oriented Electrical Steel from the Czech Republic: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 58324 (September 29, 2014) (*Grain-Oriented Electrical Steel*) at Comment 11; see also *Hand Trucks and Certain Parts Thereof from the People’s Republic of China: Preliminary Results and Partial Rescission of Administrative Review and Preliminary Results of New Shipper Review*, 72 FR 937 (January 9, 2007) (*Hand Trucks*); see also *Sugar from Mexico: Suspension of Antidumping Investigation*, 79 FR 78039 (December 29, 2014) (*Sugar from Mexico*)).

<sup>52</sup> See Petitioners’ First Case Brief at 77 (citing Petitioners’ Letter 4/5/16 at 40-45 and Ex. 15).

<sup>53</sup> See NMGGC’s Letter 12/3/15 at 4-5.

<sup>54</sup> See Petitioners’ First Case Brief at 76.

<sup>55</sup> *Id.* at 70.

- Mr. Bai extended the offer to Harmoni, and assured Harmoni that “he could quickly get Mr. Crawford’s AR 20 review request for Harmoni withdrawn, which thereby confirmed that he owned, controlled and operated the QTF-entity, or was that entity’s agent...”<sup>56</sup>
- Harmoni’s co-owner and CEO, Frank Zhou, verified that the offer was given, and that “{Mr.} Bai admitted that he and Huamei’s Wang Ruopeng ‘were behind the review request.’”<sup>57</sup>
- Mr. Zhou also stated that Mr. Bai “admitted that ‘he could have an individual he referred to as the Lawyer... ‘withdraw’ Mr. Crawford’s review request for Harmoni, in exchange for Harmoni’s agreement to ‘withdraw its complaint against *his* company, QTF,’ with the Qingdao CIQ.”<sup>58</sup>
- The AR 20 record shows that Mr. Hume withdrew Mr. Crawford’s review request for Harmoni shortly after a second phone conversation between Mr. Bai and Mr. Zhou.<sup>59</sup>
- Mr. Hume stated that he was aware that “‘Harmoni went... after Mr. Bai in China’; and he had ‘learned... that Harmoni was jeopardizing Jack’s’ – i.e., {Mr.} Bai’s – ‘business’ – i.e., QTF – in China.”<sup>60</sup>
- Record evidence shows that the “ethics wall” at Mr. Hume’s firm was “projected solely to make it appear that {Mr.} Hume’s sole client in AR 20 was Mr. Crawford, when in fact he secretly was continuing to represent the QTF Entity.”<sup>61</sup>

#### NMGGC Argues

- The NMGGC made no false statements or material misrepresentations on the record of this review.<sup>62</sup>
  - Mr. Crawford was never paid by any Chinese entity for his services, and the events related to the Garlic 20 AR are irrelevant to the Garlic 21 AR. Each review is independent.
  - Neither Mr. Hume nor any member of the NMGGC was paid to file the review request.
  - The members of the NMGGC certified the accuracy of every NMGGC submission.
  - The price of the Harmoni garlic had a direct effect on the NMGGC members’ prices
  - There was no conflict between H&A representing QTF and the AR request against Harmoni. Harmoni failed to respond to the review request. There was no need for a “Chinese wall.” When a conflict arose concerning the selection of the

<sup>56</sup> *Id.* at 73. For the BPI arguments concerning this topic *See* Petitioners’ First Case Brief at 73-74.

<sup>57</sup> *Id.* at 74 (citing Harmoni’s Letter 3/29/16 at Ex. 2).

<sup>58</sup> *Id.* (citing Harmoni March 29 at Ex. 2, paragraph 10).

<sup>59</sup> *Id.* at 75.

<sup>60</sup> *Id.* (citing NMGGC’s Letter, “21<sup>st</sup> Administrative Review of Fresh Garlic from the People’s Republic of China – NMGGC Response to the Request of Zhengzhou Harmoni Spice Co., Ltd. and Harmoni International Spice, Inc. (“Harmoni”) that the Department Reject the NMGGC Review Request of Harmoni” (April 8, 2016) (NMGGC’s Letter 4/8/16) at Ex. 5.

<sup>61</sup> *See* Petitioners’ First Case Brief at 70.

<sup>62</sup> *See* NMGGC’s Rebuttal Brief at 14-16.

surrogate country and surrogate values to value the factors of production in this review, H&A withdrew from representing QTF.

- Whether QTF's submissions were complete and accurate is irrelevant to the standing of the NMGGC and its members to file the review request.
- Whether Mr. Crawford (and Mr. Katz) had supplemental sources of income does not affect their status as producers or wholesalers of garlic like the garlic Harmoni sold to the United States during the POR.
- The records Mr. Crawford and Mr. Katz filed with the Department were sufficient to establish their respective standing as producers and wholesalers of garlic.<sup>63</sup>

#### B. Whether the NMGGC was the Real Party of Interest

##### NMGGC Argues

- Harmoni's suggestion that the NMGGC and its members were not the real parties of interest because neither Mr. Crawford nor Mr. Katz paid Mr. Hume, and Mr. Hume was receiving funds from other Chinese clients, is flawed.<sup>64</sup>
- According to section 771(9)(C) of the Act, the NMGGC is an interested party, and per 19 CFR 351.213(b)(1), an interested party may request an administrative review.
- In *Activated Carbon*, the "Department stated that 'the Department has not set a threshold amount of domestic activity to be considered a domestic interested party.' ... 'The statute, the regulations, and our past practice do not require us to determine whether a domestic interested party has a sufficient stake in the industry to request an administrative review.'"<sup>65</sup>
- Harmoni believes that only industrial level firms and their customers should be recognized under the AD law. The Department has, on multiple occasions, disagreed.<sup>66</sup>
- The CIT has also interpreted the statute and legislative history concerning standing requirements as being "'broad and unqualified' and as calling for a 'liberal construction of the standing requirements.'"<sup>67</sup>
- "{Mr.} Katz' financial inducement to subsequently leave the NMGGC coalition and support Zhengzhou Harmoni does not negate the Department's decision to initiate the Garlic 21 AR."<sup>68</sup>
- It is "absurd" for Harmoni to suggest that "domestic interested parties who are unwilling to participate in cartel-like behavior, and request the Department to review a zero deposit rate, are in any way acting improperly."<sup>69</sup>
- Both Mr. Crawford and Mr. Katz were and are producers and wholesalers of fresh garlic. "There is no evidence that either {Mr.} Crawford or {Mr.} Katz was paid by

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<sup>63</sup> *Id.* at 5-6.

<sup>64</sup> *Id.* at 10.

<sup>65</sup> *Id.* at 10-11 (citing *Activated Carbon* IDM at Comment 1).

<sup>66</sup> *See, e.g.*, NMGGC Standing Memorandum; *see also* PDM.

<sup>67</sup> *See* NMGGC's Case Brief at 11 (citing *Brother Indus v. United States*, 801 F. Supp. 751 (CIT 1992) (*Brother Indus*) at 757).

<sup>68</sup> *See* NMGGC's Case Brief at 12.

<sup>69</sup> *Id.* at 13.

any Chinese entity to file the AR request. In fact, the evidence confirms they were not.”<sup>70</sup>

- Finally, “both {Mr.} Katz and Zhengzhou Harmoni concede that Zhengzhou Harmoni paid {Mr.} Katz to change his support over to the Zhengzhou Harmoni position that H&A was being paid by Chinese entities. The Department should recognize that when a Chinese producer/exporter such as Zhengzhou Harmoni can buyout a domestic interested party it impairs, obstructs or defeats the lawful function of the Department to administer the ADD law.”<sup>71</sup>

### Harmoni Argues

- The fact that a party may produce a domestic like product does not, in and of itself, mean that the party has the right to request an administrative review of a foreign exporter.<sup>72</sup>
- The Department has the authority to apply a *de minimis* test in determining whether a party has standing. Record evidence reveals that Mr. Crawford does not qualify as a domestic producer.<sup>73</sup>
- Harmoni is compensating Mr. Katz solely for time spent in reviewing record documents, regardless of information provided or what he chooses to do with that information.<sup>74</sup>
- The Department’s preliminary decision that the NMGGC members have an “independent” and “legitimate” interest in the review process – derived from a conclusion that they grow garlic in the United States – ignores the record evidence demonstrating that they were acting as mere agents for Chinese exporters.<sup>75</sup>
- The Department’s reliance on the “no fabrication – no problem” evidentiary standard in the *Preliminary Results*, is contrary to the Department’s authority to reject a submission and apply AFA, even in the absence of unlawful intent.<sup>76</sup>
- The Department requires that a domestic producer advise the Department of its motivations in review requests for particular exporters and producers, and therefore, it is warranted for the Department to look at the NMGGC’s motivations.<sup>77</sup>
- As previously argued by Harmoni, the members of the NMGGC are not producers of the domestic like product, as that term is defined in section 771(33) of the Act, and therefore, the Department should reverse its preliminary decision.<sup>78</sup>

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<sup>70</sup> *Id.* at 13, fn 38.

<sup>71</sup> *Id.* at 14.

<sup>72</sup> See Harmoni’s Rebuttal Brief at 7 (citing NMGGC Case Brief at 14-15; see also Harmoni Case Brief at 94-98).

<sup>73</sup> *Id.* at 8 (citing Harmoni Case Brief at 99-104).

<sup>74</sup> *Id.* at 10.

<sup>75</sup> See Harmoni’s Case Brief at 91 (citing *Xantham Gum*; see also Boxcar Farm’s Letter 2/10/17)

<sup>76</sup> *Id.* at 93, 96-97 (citing PDM at 6-9 (“there is no indication that the NMGGC members have fabricated any of the evidence supporting their claims to be domestic producers.”); see also *Nippon Steel* at 1383; see also *NSK Ltd. v. United States*, 481 F. 3d 1355 (Fed. Cir. 2007) (*NSK Ltd.*) at 1361; see also *Grain-Oriented Electric Steel* at Comment 11; see also *Hand Trucks*; see also *Sugar from Mexico* at Appendix II).

<sup>77</sup> See Harmoni’s Case Brief at 97-101 (citing PDM at 6-9, (it is not warranted for “the Department to look behind the NMGGC’s review request to analyze the NMGGC’s motivations, or connections with foreign exporters”); see also 19 CFR 351.213(b)(1); see also *Wooden Bedroom Furniture*).

<sup>78</sup> See Harmoni’s Case Brief at 101-104.

### C. Whether the Petitioners are Colluding with Harmoni

#### NMGGC Argues

- Sections 371 and 1001 of Title 18 of the U.S. Code apply to the conduct of Harmoni and the petitioners.<sup>79</sup>
- Harmoni has utilized the Department’s regulations to secure its dominant position as the sole Chinese exporter with a zero-deposit rate.<sup>80</sup> The petitioners, as purchasers of Harmoni’s garlic at a preferential price, have not requested an administrative review of Harmoni since it received a *de minimis* margin in the 10<sup>th</sup> administrative review, a request that would have imposed duties on any unfairly traded Harmoni garlic.<sup>81</sup>
- Harmoni and the petitioners have “colluded to allow Harmoni to avoid ARs for 12 years; while Zhengzhou Harmoni grew to become the largest Chinese exporter of fresh garlic.”<sup>82</sup>
- Harmoni’s actions constitute a violation of section 371 of Title 18 because they amount to: (1) refusing to participate in the review process, and thus impeding or interfering with legitimate government functions; and (2) engaging in dishonest practices in connection with a program administered by a government agency.<sup>83</sup>
- In order to achieve the goals of both Titles 18 and 19 of the U.S. Code to ensure restitution, impose specific deterrence, and promote general deterrence, the Department should: (1) continue to base Harmoni’s dumping margin on adverse facts available; (2) issue “appropriate” instructions to CBP for liquidation of imports by Harmoni in the 19<sup>th</sup> administrative review, based on the final results of this review; and (3) fashion a remedy to address its concern for misuse of the law and regulations.<sup>84</sup> Otherwise, the Department creates the appearance of government acquiescence to cartel formations under the guise of antidumping laws that it has the principal responsibility to enforce.<sup>85</sup>

#### Harmoni Argues

- Mr. Hume’s argument regarding Harmoni’s and the petitioners’ alleged collusion and obstruction of legitimate government functions is an attempt to distract the Department from the illegal activities of Mr. Hume and his Chinese clients, and to focus the review on “punishing” Harmoni.<sup>86</sup>

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<sup>79</sup> See NMGGC’s Case Brief at 18-21 (citing 19 CFR 351.303(g)(1); see also 18 USC 371 and 1001; see also *United States v. Tobon-Builes*, 706 F.2d 1092, 1101 (11<sup>th</sup> Cir. 1983); see also *Bryson v. United States*, 396 U.S. 64 (1969); see also *Dennis v. United States*, 384 U.S. 855 (1966) (*Dennis*); see also The U.S. Attorneys’ Manual, USAM 9-42.001 (noting that 18 USC 1001 does not require proof of the following: any financial or property loss to the federal government (though one often exists); that the false statement be made or submitted directly to the federal government; any favorable agency action based upon the statements; reliance by the government; the defendant’s actual knowledge of federal agency jurisdiction; or that the false statement be written, signed, or sworn); see also *Haas v. Henkel*, 216 U.S. 462 (1910) (*Haas*).

<sup>80</sup> See NMGGC’s Case Brief at 16.

<sup>81</sup> *Id.* at 16-17, 21, 25-26.

<sup>82</sup> See NMGGC’s Rebuttal Brief

<sup>83</sup> See NMGGC’s Case Brief at 21-22, 26 (citing *Haas* and *Hammerschmidt*).

<sup>84</sup> *Id.* at 22-23 (citing *Glycine & More, Inc. v. United States, et al.*, Slip Op. 15-124 (CIT 2015) (*Glycine & More*)).

<sup>85</sup> *Id.* at 23.

<sup>86</sup> See Harmoni’s Rebuttal Brief at 10-13 (citing NMGGC’s Case Brief at 16-27).

- The petitioners acted in a commercially reasonable manner by asking that the Department review Mr. Hume’s Chinese exporting clients, who were engaged in a funneling scheme to evade paying the appropriate AD cash deposits, rather than Harmoni, who was entitled to a zero cash deposit rate.<sup>87</sup>
- Harmoni’s increased share of the U.S. garlic market resulted from the fact that the Department and CBP finally were able to stop the QTF-entity’s massive, illegal funneling schemes.<sup>88</sup>
- There is no evidence that Harmoni’s garlic adversely affected domestic producers of garlic.<sup>89</sup>
- Neither Harmoni, nor the petitioners, engaged in any activities that could be considered violations of title 18.<sup>90</sup>

### **Petitioners Argue**

- In a case like this one, “it becomes crucial to the domestic producers that the few mandatory respondent slots for each new review not be ‘wasted’ on an exporter that, based on the domestic producers’ reconnaissance, is not engaged in illegal duty evasion activity, and is unlikely to be found to have sold its goods at dumped prices if it is forced to participate as a mandatory respondent.”<sup>91</sup>
- Christopher Ranch, a member of the petitioners, “noted that his company had a solid business relationship with Harmoni, and...Harmoni has always followed U.S. import regulations.”<sup>92</sup>
- The NMGGC has not cited any record evidence to support its claims that the petitioners purchase Harmoni’s garlic at a preferential price, the petitioners and Harmoni have a decades long agreement, and the petitioners and Harmoni have schemed to defraud the United States.
- There are many legitimate reasons why a domestic producer would decide to request an administrative review of only certain exporters.
  - A major reason is that the Department does not have the resources needed to investigate in each new administrative review more than one or two exporters as mandatory respondents. In such cases, the Department will assign to all other exporters subject to a review the weighted-average of the dumping rates determined for the mandatory respondents.
  - There is a long and deep history of AD duty evasion in this proceeding. As such, it is crucial to the domestic producers that as many exporters who have shipped large volumes of garlic through AD duty evasion schemes as possible are examined.<sup>93</sup>
  - A major reason is that the Department does not have the resources needed to investigate in each new administrative review more than one or two exporters as mandatory respondents. In such cases, the Department will assign to all other

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<sup>87</sup> *Id.* at 14.

<sup>88</sup> *Id.* (citing NMGGC’s Case Brief at 6-8).

<sup>89</sup> *Id.* at 15.

<sup>90</sup> *Id.* at 16 (citing 18 USC 1001; *see also* 18 USC 371).

<sup>91</sup> *See* Petitioners’ First Rebuttal Brief at 30.

<sup>92</sup> *Id.* at 33.

<sup>93</sup> *Id.* at 30.

exporters subject to a review the weighted-average of the dumping rates determined for the mandatory respondents.

- This enables the Department to focus its limited resources on those exporters for which close review is most needed.
- The petitioners' actions in this regard have significantly helped the Department to vigorously enforce the AD order on fresh garlic imports from China. Accordingly, and contrary to NMGGC's claim, petitioners' careful selection of exporters for its review requests for the last nine administrative reviews in no manner amounts to our gaming of the system.<sup>94</sup>

#### D. Whether the NMGGC's Certifications were Valid

#### Harmoni Argues

- Parties are not allowed to submit "blank check" company certifications.<sup>95</sup> A party submitting a blank check certification to the Department has, in the absence of extenuating circumstances,<sup>96</sup> submitted a false certification to the Department.<sup>97</sup>
- Mr. Hume has provided one email as evidence to support his claim that he requested permission to use "blank check signatures," compared to the 34 blank checks submitted for Mr. Crawford, and 30 for Mr. Katz. Mr. Katz and Ms. Medina have both charged that Mr. Hume did not request approval for each submission.<sup>98</sup>
- The Department cannot allow a party to cure an intentional, material breach of its regulations by allowing post-hoc corrective action, after an opposing party has brought the defect to the Department's attention.<sup>99</sup>
- The Department should either reject all submissions filed on behalf of the NMGGC, or apply total AFA to the NMGGC.<sup>100</sup>

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<sup>94</sup> *Id.* at 32.

<sup>95</sup> See Harmoni's Case Brief at 80-81 (citing *Certification of Factual Information to Import Administration during Antidumping and Countervailing Duty Proceedings: Interim Final Rule*, 76 FR 7491 (February 10, 2011) (*Interim Final Rule*)); see also 19 CFR 351.303(g); see also *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (*Certification of Factual Information*); see also *Initiation Notice*; see also *Certain Frozen Warmwater Shrimp from Thailand; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments; 2012-2013*, 79 FR 15951 (March 24, 2014) (*Warmwater Shrimp from Thailand 2014*); see also *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Partial Rescission of Review, and Revocation of Order (in Part); 2011-2012*, 78 FR 42497 (July 16, 2013) (*Warmwater Shrimp from Thailand 2013*)).

<sup>96</sup> See Harmoni's Case Brief at 84-85 (citing *Certain Corrosion-Resistant Steel Products from Italy: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 81 FR 35320 (June 2, 2016) (*Corrosion-Resistant Steel from Italy*)); see also *Certain Steel Nails from the United Arab Emirates: Final Results of Antidumping Duty Administrative Review; 2011-2013*, 79 FR 78396 (December 30, 2014) (*Nails from the UAE*)).

<sup>97</sup> See Harmoni's Case Brief at 82 (citing 19 CFR 351.303(g); see also *Interim Final Rule* at 76 FR 7494).

<sup>98</sup> See Harmoni's Case Brief at 83 (citing NMGGC's Letter 3/8/17 at 3-4; see also Boxcar Farm's Letter 3/9/17; see also Harmoni's Letter 3/9/17 at Ex. 1).

<sup>99</sup> See Harmoni's Case Brief at 84 (citing, e.g. *Papierfabrik August Koehler SE v. United States*, 843 F. 3d 1373, 1379-1380 (Fed. Cir. 2016) (*Papierfabrik*)).

<sup>100</sup> See Harmoni's Case Brief at 86-89 (citing *Interim Final Rule*).



## NMGGC Argues

- “The NMGGC company certificates were individually prepared for every submission and approved by each member before any submission was filed as evidenced by the specific document reference in the certification,” which is in line with the Department’s regulations.<sup>101</sup>
- Mr. Katz was provided a copy of every NMGGC submission, and he never stated that he disapproved of a filing. “After he withdrew from NMGGC and supported Zhengzhou Harmoni, Mr. Katz lost any incentive to provide honest answers.”<sup>102</sup>
- The fact that Harmoni is paying Mr. Katz confirms Mr. Katz’ bias.
- Ms. Medina does not have any incentive to provide honest answers to the Department as well. She “was fired for unauthorized use of the H&A credit card, forging and cashing checks without authorization.”<sup>103</sup>
- She also accessed H&A’s computer files after being fired, and “the discharged employee Medina is the most likely source of H&A attorney-client emails that were included in Zhengzhou Harmoni filings.”<sup>104</sup>

## Department’s Position:

As explained in the *Initiation Notice*, each year during the anniversary month of the publication of an antidumping duty order, an interested party, as defined in section 771(9) of the Act may request that the Department conduct an administrative review under section 751(a)(1) of the Act of specified exporters or producers covered by an order. The Act defines an “interested party” as including “a manufacturer, producer, or wholesaler in the United States of a domestic like product.”<sup>105</sup> The term “producer” is not defined in the Act, and the Department has consistently explained that the Act does not contemplate a minimum threshold amount of production or manufacture for a party to be considered a domestic producer. The Department here reiterates this.

During the course of an administrative review, the Department issues questionnaires and solicits information from the parties. These responses become the basis of the administrative record, solely upon which the Department relies for its final results.<sup>106</sup> In other words, the Department’s rationale underlying its final determinations and final results are based exclusively on record evidence submitted by, and certified by, interested parties. In fact, any determination by the Department which is not based on substantial evidence on the record will be held unlawful by the

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<sup>101</sup> See NMGGC’s Rebuttal Brief (citing *Interim Final Rule* at 7492).

<sup>102</sup> See NMGGC’s Rebuttal Brief at 17.

<sup>103</sup> *Id.* at 18.

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

<sup>105</sup> See section 771(9) of the Act; see also 19 CFR 351.102(b)(17) which defines “domestic interested party” as one of the parties described in subparagraph (C), (D), (E), (F) or (G) of section 771(9) of the Act.

<sup>106</sup> See section 751 of the Act; see also e.g., 19 CFR 351.102 (21), which defines factual information; 19 CFR 351.301, which provides for the time limits for submission of factual information; 19 CFR 351.302, which provides for extensions of time, and return of untimely filed or unsolicited material; 19 CFR 351.303, which provides for filings, document identification, format, translation, service, and certification of documents.

Courts.<sup>107</sup> The Department acts within its expertise and discretion when it considers directly conflicting evidence and decides which evidence to credit.<sup>108</sup>

Although there is no minimum threshold of production activity to qualify a company as a domestic producer, the Department nevertheless must be able to rely on, and give credit to, the evidence that is submitted during a proceeding – including evidence of domestic production.

In our *Preliminary Results*, we found that, at that time, there was no record evidence indicating that the NMGGC members had fabricated any aspect of their submissions. However, after the publication of the *Preliminary Results* substantial evidence was filed on the record, which has undermined the veracity of all of the NMGGC’s submissions to the Department, including the basis for its review request of Harmoni and the production and business information of NMGGC, which at this point consists only of Mr. Crawford. In consideration of the record evidence submitted since the *Preliminary Results*, we have determined that, because the NMGGC lacks credibility, its review request was illegitimate *ab initio*, and therefore we have rescinded the instant review with respect to Harmoni. The repeated inconsistencies in the NMGGC’s record submissions, and the multiple contradictions between the NMGGC’s claims and the record evidence, demonstrate that none of the NMGGC’s submissions and claims can be used as a reliable basis for reaching a determination that the NMGGC is a “domestic interested party” that can request an administrative review.

In particular, the NMGGC has claimed: 1) Chinese exporters/businessmen were not involved in its review request; 2) neither the members of the NMGGC nor Mr. Hume received direct or indirect compensation for their participation in this review; and 3) Mr. Crawford withdrew his AR 20 review request of Harmoni because he was intimidated by a private investigator sent by Harmoni. We explain below, in turn, how each of these factual claims is contradicted by other, more reliable, record evidence.

*Claim 1) Chinese exporters/businessmen were not involved in its review request.*<sup>109</sup>

Extensive record information – including email exchanges and declarations – demonstrates that Mr. Hume and certain Chinese exporters have worked for years towards having Harmoni participate in a review as a mandatory respondent. For example, below are some excerpts from record evidence demonstrating the history and extent of Mr. Hume’s statements and actions regarding his involvement with various Chinese exporters/businessmen:

- July 31, 2010, email exchange between Mr. Wang, the owner of Golden Bird and Huamei Consulting, and Mr. Hume,  
Mr. Wang: “Please let us know when you are going to start the attack through Harmoni issue, and how? What is your plan?”<sup>110</sup>

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<sup>107</sup> See section 516A(b) of the Act, which provides for the Court of International Trade’s standards of review.

<sup>108</sup> It is well settled that any evaluation of the substantiality of evidence, “must take into account whatever in the record fairly detracts from its weight, including contradictory evidence, or evidence from which conflicting inferences could be drawn.” *Zhengzhou Harmoni Spice co. v. United States*, 617 F. Supp. 2d 1281 (CIT 2009).

<sup>109</sup> See NMGGC’s Letter 2/91/7 at 5.

<sup>110</sup> See Harmoni’s Letter 3/9/17 at Ex. 6

- August 2, 2010, email exchange between Mr. Hume and Mr. Wang  
Mr. Hume: “On the Harmoni issue ... {w}e want to review the history, imply collusion between the petitioners and Harmoni, and claim bias – our interests are being denied because a mandatory respondent is not responding. The goal is twofold -- first, maybe the DOC will include Harmoni in this review and second, maybe Harmoni will be assigned a margin for this review for failing to participate after being selected as a mandatory respondent.”<sup>111</sup>
- October 11, 2014, email exchange between Mr. Hume and Ms. Lucy Wang, employee of Mr. Wang  
Lucy Wang: “Dear Mr. Hume, You mean you (H&A) and Carol will represent petitioner (who fight with Harmoni) and respondents respectively? Best regards, Lucy.”  
Mr. Hume: “Lucy, This has become the American way. ...there will be no Chinese garlic exporters other than Harmoni unless Harmoni is included in a review and its margins calculated. ... one option I have been considering is filing a review request against Harmoni in my name (H&A) and letting Carol {employee of H&A} do the responses. We could ‘create a Chinese wall’ where lawyers in the same firm represent clients on different sides of a proceeding and create a “wall” between themselves to give teh {sic} appearance they are not working together. Of course, I need a ‘client’ that is a US garlic producer. NOTE: This is only an option, but one that can work since I know most of the issues and Huamei can do the other work. In fact, Huamei can do the filings from China – with or without Elena’s help.”<sup>112</sup>
- October 23, 2015, email exchange between Mr. Hume and Mr. Montoya  
Mr. Montoya: “I have been contacting growers by phone and/or email ... I do not indicate we are Chinese affiliated, simply that we represent a handful of domestic interested parties.”<sup>113</sup>
- November 12, 2015, email exchange between Mr. Hume and Mr. Montoya  
Mr. Hume: “In your review request for Garlic 21 on behalf of the ... US domestic interested parties, make the following points: 1. Want to level playing field by calculating margin for Harmoni; 2. Clarify what, if any, arrangements there may be between Harmoni (and any related producer/exporter) and any US interested party; and, 3. The clients you represent reflect a large number of garlic producers that have a direct interest in seeing all Chinese parties are treated the same.”<sup>114</sup>
- March 9, 2017, Mr. Hume declaration  
Mr. Hume: “In 2014 I was living in Ojai, CA and I thought that it would be possible to find some growers in in California that would be willing to file a review request...Pursuing my interest in finding a garlic farmer to file a review request ...I thereupon contacted several garlic producers not associated with the FGPA without success.”<sup>115</sup>

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<sup>111</sup> *Id.*

<sup>112</sup> *See* Harmoni’s Letter 2/21/17 at Ex. 3.

<sup>113</sup> *See* NMGGC’s Letter 3/9/17 at Ex. 9.

<sup>114</sup> *Id.*

<sup>115</sup> *Id.* at Ex. 3.

Thus, contrary to the NMGGC's and Mr. Hume's claims, there is substantial information on the record that shows how Mr. Hume and Chinese garlic exporters, which were his clients or business partners (or both), have over a period of years, formulated a number of strategies with the ultimate goal that the Department review Harmoni. In the instant review, these efforts took the form of the NMGGC's review request. In the process of assembling the members of the NMGGC, record evidence indicates that H&A did not disclose its relationship with Chinese exporters to the members of the NMGGC.<sup>116</sup>

We do not mean to suggest that it was the dual or conflicting motives of Mr. Hume and the NMGGC, in and of themselves, that cause us to rescind the review of Harmoni. A legitimate domestic producer might have ties or affiliations with foreign companies, and this would not cause the domestic producer to lose its status as a domestic interested party under the Act. Rather, the problem here is that Mr. Hume and the NMGGC made factual statements and claims that are contradicted by record evidence. This undermines their credibility and the credibility of all submissions they have made on the record of this review.

*Claim 2) Neither the members of the NMGGC nor Mr. Hume received direct or indirect compensation for their participation in this review.*<sup>117</sup>

We note that record evidence confirms that Mr. Hume provided \$15,000 to Mr. Katz between June and November of 2016;<sup>118</sup> and that Mr. Crawford received a payment of \$50,000 from Mr. Hume following his review request in the instant review, and his withdrawal of the review request of Harmoni in AR 20.<sup>119</sup>

Moreover, the record shows that Mr. Crawford traveled to China in July of 2015, and Mr. Wang paid for five of the seven nights he stayed in China.<sup>120</sup> In addition, in March 2017, H&A imported garlic processing equipment from Qingdao, China to Taos, New Mexico.<sup>121</sup> In his February 6, 2017, submission, Mr. Crawford stated that a "garlic separator and garlic peeler are being shipped from China for us by coalition members."<sup>122</sup> Finally, the record shows that the same Chinese clients<sup>123</sup> involved with Mr. Hume in devising plans to request a review of Harmoni in previous reviews, made monthly payments to H&A throughout 2016, as well as a

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<sup>116</sup> *Id.* at Ex. 9.

<sup>117</sup> *See, e.g.* NMGGC's Letter 2/20/17 at 15, Ex. 4; *see also* NMGGC's Letter 2/6/17 at 4; *see also* NMGGC's Letter 3/9/17 at Ex. 4, 3.

<sup>118</sup> Mr. Hume provides copies of two checks given to Mr. Katz: \$5,000 in June 2016, and \$10,000 in November 2016. *See* NMGGC's Letter 2/9/17 at Ex. 4.

<sup>119</sup> In an email exchange between Mr. Katz and Mr. Crawford, Mr. Crawford stated, "I received a payment re AR 20." *See* Boxcar Farm's Letter 2/21/17 at Ex. 1

<sup>120</sup> *See* NMGGC's Letter 2/20/17 at Ex. 2.

<sup>121</sup> *See* Harmoni's Letter 3/9/17 at Ex. 4.

<sup>122</sup> *See* NMGGC's Letter 2/6/17 at 5.

<sup>123</sup> Mr. Wang Ruopeng is the owner of Huamei Associates (Huamei). Huamei signed a contract with H&A on January 1, 2016 which secured H&A as counsel for Huamei (an NSR respondent) and in litigation (representing Golden Bird and other Chinese clients) arising from Garlic 17, Garlic 18 and Garlic 19. Mr. Wang owned Golden Bird from November 2015 through November 2016 (Golden Bird claims to have stopped exporting garlic in November 2014.) Mr. Wang also contacted Mr. Hume to secure Mr. Crawford's March 2015 withdrawal of its review request for Harmoni in Garlic 20.

\$100,000 payment between February and May 2016.<sup>124</sup> Thus, contrary to the NMGGC's and Mr. Hume's claims, there is substantial evidence on the record that shows that Mr. Katz and Mr. Crawford were compensated by Mr. Hume, and that Mr. Hume was compensated by his Chinese clients during the entire course of his representation of NMGGC.

*Claim 3) Mr. Crawford withdrew his AR 20 review request of Harmoni because he was intimidated by a private investigator sent by Harmoni.*<sup>125</sup>

In a declaration submitted on April 8, 2016, Mr. Hume stated that: “{o}n a parallel track, as Harmoni now describes, Harmoni went after Mr. Bai in China. At the time, I was not informed of any of the details. When I learned (and communicated with Crawford) that Harmoni was jeopardizing Jack's business and Wang Ruopeng asked me to consider asking Crawford to withdraw his review request. Crawford agreed, and we did.”<sup>126</sup>

Thus, contrary to the NMGGC's and Mr. Hume's earlier claims, the record of this review shows that Mr. Crawford did not withdraw his review request of Harmoni in AR 20 because he was intimidated by Harmoni's private investigator. Rather, Mr. Crawford withdrew the review request at the behest of Mr. Hume's Chinese clients.<sup>127</sup>

These three examples demonstrate that factual statements made by the NMGGC and Mr. Hume early in the administrative review are inconsistent with the record evidence. We are also concerned about much of the other evidence that has been revealed during this review. For example, in the NMGGC's April 15, 2016, questionnaire response regarding its status as a domestic producer, the NMGGC claimed that “{g}arlic farmers in the United States cannot compete with the Chinese garlic funneled into the United States by Harmoni that is exempt from the Department's administrative reviews.”<sup>128</sup> However, Mr. Katz later stated that “Boxcar Farm's fundamental problem is not competition from cheap garlic coming in from China,”<sup>129</sup> and that “{b}ased on nearly two years of conversation with Crawford and Hume, there was usually never any pretense otherwise in verbal conversation.”<sup>130</sup> Referring again to Mr. Crawford and Mr. Hume, Mr. Katz stated that “{o}ur stated moral high ground – ‘leveling the playing field,’ etc., etc. – inevitably came with a ‘wink, wink’ whenever we talked about it.”<sup>131</sup> In fact, Mr. Katz's submissions of February 10 and 21, 2017, undermine so much of the NMGGC's April 15, 2016, questionnaire response that we are unable to give any credit to the production information contained in that April 15, 2016 response.

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<sup>124</sup> See Harmoni's Letter 2/21/17 at Ex. 6; see also NMGGC's Letter 3/9/17 at Ex. 7.

<sup>125</sup> See NMGGC's Letter 12/3/15 at 4-5.

<sup>126</sup> See NMGGC's Letter 3/22/16 at Ex. 5.

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

<sup>128</sup> See NMGGC's Letter “Response to Gilgunn Letter Confirming the NMGGC Members Are Domestic Interested Parties As They Are Producers or Wholesalers Within the United States of the Domestic Like Product – filed on Behalf of the NMGGC,” (April 15, 2016) (NMGGC's Letter 4/15/2016), at 4.

<sup>129</sup> See Boxcar Farm's Letter 2/10/17.

<sup>130</sup> See Boxcar Farm's Letter 2/21/17, at 7.

<sup>131</sup> *Id.*

Likewise, the record evidence now reveals serious problems with the certifications submitted under 19 CFR 351.303(g) by the NMGGC. This provision of the Department's regulations requires that each submission containing factual information includes a certification from the "person(s) officially responsible for presentation of the factual information" and "the legal counsel or other representative" if applicable.<sup>132</sup> In the 2011 promulgation of the *Interim Final Rule*, the Department anticipated the use of "blank check" company certifications, and as a result, determined that each certification would require the date and title of the document to correspond with the respective submission to "prevent the use of a generic 'blank check' certification that could simply be attached to a submission irrespective of whether the signer had reviewed the submission."<sup>133</sup> Again in 2013, the Department considered the use of 'blank check' certifications, stating that "eliminating the date of the submission in the text of the certification would undermine our efforts to strengthen the regulation, because it could permit a 'blank check' certification that could simply be copied and attached to each supplemental questionnaire response. Requiring a date ensures that the signer is aware of the specific submission that he or she is certifying, and for which he or she is responsible, while also providing a strong link between the certification and the submission,"<sup>134</sup> and "the date of the signature must be the actual date on which the person signs the certification, regardless of the filing date or the due date of the submission."<sup>135</sup>

The Department's regulation, as well as the 2013 response to public comments pertaining to the regulation, make clear that the Department intended for each individual submission to be reviewed by the person officially responsible for the preparation of the factual information, pursuant to 19 CFR 351.303(g).

Following the *Preliminary Results*, Mr. Katz declared that he "only signed one Certification document – at the very beginning" of the review process, and that he "did not sign off on separate filings."<sup>136</sup> The NMGGC confirmed that H&A digitally copied the signatures of the members of the NMGGC, "similar to the use of autopen," but countered that each member of the NMGGC approved of every NMGGC filing to the Department.<sup>137</sup> Some email exchanges between Mr. Hume and members of the NMGGC appear to confirm that, in a few instances, the members of the NMGGC provided their email approval for the placement of their "e-signature."<sup>138</sup> Yet again, Mr. Katz declared on the record that this was not true.

This basic inconsistency coming from what should be a unified interested party renders all submissions bearing the digitally copied signatures of Mr. Katz and Mr. Crawford unreliable and not credible.

Additionally, the Department here acknowledges that after allegations regarding NMGGC's certifications were made on the record, Mr. Crawford made declarations certifying that the

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<sup>132</sup> See 19 CFR 351.303(g)

<sup>133</sup> See Harmoni's Case Brief at 80 (citing *Interim Final Rule* at 76 FR 54697).

<sup>134</sup> *Id.* at 81-82 (citing *Certification of Factual Information* at 78 FR 42679).

<sup>135</sup> *Id.* at 82 (citing *Certification of Factual Information* at 78 FR 42690).

<sup>136</sup> See Boxcar Farm's Letter 2/21/17 at 7.

<sup>137</sup> See NMGGC's Letter 3/8/17 at 2.

<sup>138</sup> *Id.* at Ex. 4; see also NMGGC's Letter 3/9/17 at Ex. 4.

counsel for the NMGGC received his approval prior to filing any submissions on his behalf.<sup>139</sup> However, notwithstanding Mr. Crawford's attempts to retroactively approve certain submissions<sup>140</sup> which, when originally filed were clearly copied from prior submissions,<sup>141</sup> we note that the contradictions and inconsistencies present in the statements made by the members of the NMGGC further raise concerns regarding the reliability of all of the NMGGC's submissions to the administrative record. However, due to the complicated and serious nature of these allegations, the Department will continue to evaluate Mr. Katz's claims regarding the validity of these certifications, pursuant to the Department's regulations.<sup>142</sup>

In sum, the question of NMGGC's status as "a domestic interested party" is fundamental to its ability to request an administrative review of a Chinese exporter. We note that the record of this review shows that Mr. Crawford and Mr. Hume have misrepresented critical information regarding the circumstances surrounding the NMGGC's request to review Harmoni in this and prior administrative reviews. As a result of their material misrepresentations on the record of this review, the Department has concluded that the NMGGC and Mr. Crawford's inability to provide complete and accurate responses taint all of the statements and information that they have submitted on the record of this review. Most importantly, the numerous contradictions in the record evidence taint the April 15, 2016, questionnaire response in which the NMGGC provided its production and business information to support its claim for "domestic interested party" status. Because we determine that the entirety of the NMGGC's information, including its garlic production information, is unusable, we find that the NMGGC has failed to demonstrate that it is a domestic interested party. As such, there is no valid review request of Harmoni. While failure to respond to an antidumping questionnaire normally carries consequences, regardless of whether a party considers the issuance of such questionnaire justified or not, in this case, we find that there was no valid administrative review of Harmoni in the first place. Thus, in these unusual circumstances, Harmoni's failure to respond becomes moot.

Finally, the Department addresses the alleged collusion between the petitioners and Harmoni. The NMGGC alleges that the petitioners and Harmoni have engaged in cartel-like behavior and have violated criminal statutes. The Department does not have the authority to enforce the criminal laws of the United States. Thus, we can offer no opinion on this.

In conclusion, the Department is rescinding the administrative review of Harmoni and Jinxiang Jinma. We will instruct CBP that Harmoni's and Jinxiang Jinma's entries during the POR should liquidate as entered.

## **Comment 2: Whether Hejia is Eligible for a Separate Rate**

### **Hejia's Case Brief**

- Record evidence, including CBP data and Hejia's certification of no shipments, demonstrates that Jinxiang Hejia Co., Ltd. (Hejia) had no shipments during the POR, and

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<sup>139</sup> See NMGGC's Letter 3/8/17 at Ex. 2; see also NMGGC's Letter 3/9/17.

<sup>140</sup> See NMGGC's Letter 3/8/17 at Ex. 2.

<sup>141</sup> See Harmoni's Letter 3/3/17 at Ex. 1.

<sup>142</sup> See *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) at 42679-42680, Comment 2.

thus, the Department should rescind its review of Hejia.<sup>143</sup> There is no documentation on the record suggesting otherwise.<sup>144</sup>

- The Court can set aside a determination made by Commerce when there is not substantial record evidence to support the final determination, if the decision is not based on fair and balanced comparison of the data, if the most accurate methodology available is not used, or if the decision is otherwise not in accordance with the law.<sup>145</sup> The Department cannot use speculation, nor may it exert its authority in an arbitrary or capricious manner.<sup>146</sup>
- The Department must objectively and with a “reasonable mind” evaluate the totality of evidence on the record, instead of drawing conclusions based on “isolated tidbits of data which suggest a result contrary to the clear weight of the evidence.”<sup>147</sup> The Court routinely overrules the Department in situations like this: where the Department draws a conclusion that is arbitrary and capricious.<sup>148</sup>

### **Petitioners’ Second Rebuttal Brief**

- Hejia submitted a no shipment certification to the Department nearly a year after the established deadline for submission of such certification, without requesting that an extension be made, pursuant to 19 CFR 351.302(b)-(c).<sup>149</sup>
- Hejia’s failure to submit a timely no shipment certification prevented the Department from assessing the validity of Hejia’s claims.<sup>150</sup>

### **Department’s Position:**

The Department continues to find that Hejia is part of the PRC-wide entity for these *Final Results*. The Department notes that the deadline to submit a certification of no shipments was 30 days after the publication of the initiation notice in the *Federal Register* (i.e., February 6,

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<sup>143</sup> See Hejia’s Case Brief at 1-3 (citing Department Memorandum, “Antidumping Duty Administrative Review of Fresh Garlic from the People’s Republic of China: U.S. Customs Entries” (January 19, 2016) and Department Memorandum, “Fresh Garlic from People’s Republic of China, Antidumping Duty: No Sales Certification” (January 23, 2017) (Hejia’s No Sales Certification).

<sup>144</sup> *Id.* at 4.

<sup>145</sup> *Id.* (citing 19 USC 1516a(b)(1)(B); see also *Universal Camera Corp. v. NLRB*, 340 US 474, 477 (1951) (*Universal Camera*); see also *Consolidated Edison Corp. v. Labor Board*, 305 U.S. 197, 229 (1938) (*Consolidated Edison*); see also *Atlantic Sugar, Ltd. v. United States*, 744 F.2d 1556, 1562 (Fed. Cir. 1984) (*Atlantic Sugar*); see also *USX Corp. v. United States*, 11 CIT 82, 84, 655 F. Supp. 487, 489 (1987) (*USX*); see also *Gerald Metals, Inc. v. United States*, 132 F. 3d 716, 720 (Fed. Cir. 1997) (*Gerald Metals*); see also *Jinan Yipin Corp. v. United States*, 637 F. Supp. 2d 1183, 1192 (CIT 2009) (*Jinan Yipin*); see also *Dorbest Ltd. v. United States*, 462 F. Supp. 2d 1262, 1302 (CIT 2006) (*Dorbest*); see also *Shakeproof Assembly Components Div. of Ill. Tool Works v. United States*, 268 F.3d 1376, 1382 (Fed. Cir. 2001) (*Shakeproof Assembly*); see also *Thai Pineapple Canning Indus. Corp. v. United States*, 273, F.3d 1077, 1085 (Fed. Cir. 2001) (*Thai Pineapple Canning*)).

<sup>146</sup> *Id.* at 3-4 (citing *Asociacion Colombiana Exportadores de Flores v. United States*, 40 F. Supp. 2d 466, 472 (CIT 1999) (*Asociacion Colombiana*); see also *Tung Mung Dev. Co., v. United States*, 354 F.3d 1371, 1378 (Fed. Cir. 2004) (*Tung Mung*); see also *SKF USA Inc. v. United States*, 254 F.3d 1022, 1028 (Fed. Cir. 2001) (*SKF*); see also *Changzhou Wujin Fine Chem Factory Co., Ltd. v. United States*, 701 F.3d 1367, 1377 (Fed. Cir. 2012) (*Changzhou Wujin*); see also *Bowman Transp. Inc. v. Arkansas-Best Freight Sys. Inc.* (US 1974) (*Bowman*)).

<sup>147</sup> See Hejia’s Case Brief at 4-5 (citing *Dorbest*; see also *Atlantic Sugar*; see also *Universal Camera Corp*; see also *USX*).

<sup>148</sup> *Id.* at 5 (citing *Tung Mung*; see also *SKF*).

<sup>149</sup> See Petitioners’ Second Rebuttal Brief at 5-7.

<sup>150</sup> *Id.* at 5-7.



2016).<sup>151</sup> Hejia submitted its certification of no shipments on January 23, 2017, almost one full year after the deadline to submit the certification had passed. Hejia did not request an extension to file its certification of no shipments, nor did it provide a reason for the late submission in its case brief. Accordingly, the Department rejected it.<sup>152</sup>

As for Hejia's argument that the CBP entry data used to select mandatory respondents showed "zero entries in the POR of fresh garlic from Hejia,"<sup>153</sup> the Department disagrees. While the CBP entry data may not list Hejia as an exporter, the Department's practice is to confirm that a company did not have any entries of subject merchandise during the POR through receipt of a no shipments certification.<sup>154</sup> While we consider the CBP data to be accurate and reliable for the purposes of ranking and selecting respondents for individual examination early in the review, because of the possibility that some suspended Type 3 entries could be omitted from the original listing, we require the company certification, and the Department issues a separate inquiry to CBP to ensure that no such entries were missed that should be subject to the review. We note that for the 11 companies which we have determined had no shipments during the POR, we submitted inquiries to CBP to verify this. Had Hejia timely filed a no shipment certification, the Department would have submitted an inquiry to CBP regarding it, as well. The fact remains that Hejia filed an untimely certification of no shipments, and the Department, after determining that it was untimely, rejected this submission.<sup>155</sup> After considering the arguments presented by the petitioners and Hejia in the case briefs, the Department continues to find that there is an insufficient basis to determine that Hejia had no shipments during the POR.

### **Comment 3: Yuting's No Shipment Status**

#### **Yuting's Case Brief**

- Yuting timely filed a no shipments certification on January 13, 2016.<sup>156</sup>
- In the *Preliminary Results*, the Department mistakenly stated that Yuting had shipped garlic into the United States during the POR.<sup>157</sup>
- Yuting made only one shipment of subject merchandise that was captured by the 20<sup>th</sup> Administrative Review.
- On December 14, 2016, Yuting submitted a letter to the Department to "clarify the situation regarding its CBP data...The Department should consider the facts identified in the clarifying letter in the Final Results."<sup>158</sup>
- Yuting assumes that the CBP entry data were collected based on the dates of the entry summaries. "Yuting should not be penalized for failing to report an entry that occurred in

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<sup>151</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Review*, 81 FR 736 (January 7, 2016) (*Initiation Notice*).

<sup>152</sup> See Department Letter, "21st Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Request for Removal of Untimely No Shipment Certification" (June 7, 2017) (Hejia Rejection Letter).

<sup>153</sup> See Hejia's Case Brief at 4.

<sup>154</sup> See PDM at 9-10.

<sup>155</sup> See Hejia Rejection Letter.

<sup>156</sup> See Yuting's Case Brief at 2; see also Letter from Huamei Consulting Co., Ltd., "Fresh Garlic from the People's Republic of China – No Sales Statements in Connection with the Garlic 21 (2014-2015) Administrative Review," dated January 13, 2016.

<sup>157</sup> See PDM at No Sales Companies.

<sup>158</sup> See Yuting's Case Brief at 3; see also Yuting's Letter 12/14/16.

the 21<sup>st</sup> POR but that Yuting previously reported based on the date of sale for the 20<sup>th</sup> POR.”<sup>159</sup>

- The Department should consider the fact that Yuting acted in good faith, and had no intention to mislead the Department. The Department should reconsider its preliminary determination and include Yuting as a company that made no shipments during the POR.

No other interested party commented on this issue.

### **Department’s Position:**

The Department’s review of the record confirms that the sale in question, which entered the United States during this POR, was subject to the previous administrative review. We intend to apply the assessment rate calculated for Yuting in the prior review to this suspended entry in the instant review. There is no information indicating that Yuting had other sales of subject merchandise to the United States during the instant POR.

### **Comment 4: Whether the Application of AFA to the QTF-Entity was Warranted, and Whether the QTF-Entity is Eligible for a Separate Rate**

#### **Petitioners’ First Case Brief**

- The Department correctly found that QTF is affiliated with QXF, QBT, QTHF, and Lianghe. However, the Department should also find that the QTF-entity is affiliated with Golden Bird, Mr. Wang Ruopeng, the Bai/Wang Business Partnership, and Huamei Consulting.<sup>160</sup>
- QTF misleadingly stated in its section A response that it was not affiliated with any other Chinese producer or exporter of subject merchandise during the POR. The record shows that QTF was affiliated with 12 entities that were involved in the production or exportation of subject merchandise.<sup>161</sup>
- Harmoni’s fraud claim included a declaration from Frank Zhou,<sup>162</sup> the CEO and co-owner of Harmoni International Spice Inc., the U.S. parent company of Harmoni. The declaration states that:
  - Based on a telephone conversation with Bai Wenxuan, Mr. Bai and Mr. Wang “control and operate” the QTF-entity, including Golden Bird, and that Mr. Bai and Mr. Wang were the parties behind the review request and withdrawal of the review request of Harmoni.<sup>163</sup>

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<sup>159</sup> *Id.* at 3-4.

<sup>160</sup> See Petitioners’ First Case Brief at 1-2, 9 (citing Petitioners’ Letter, “21<sup>st</sup> Administrative Review of the Antidumping Order Covering Fresh Garlic from the People’s Republic of China – Petitioners’ Pre-Preliminary Comments on Control of QTF and the NMGGC” (November 15, 2016) (Petitioners’ Letter 11/15/16)).

<sup>161</sup> See Petitioners’ First Case Brief at 3 (citing section 771(33) of the Act).

<sup>162</sup> See Harmoni’s Letter, “Resubmission of Harmoni Fraud Claims in Connection with POR 21 and Prior Administrative Reviews of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China (A-570-831)” (March 29, 2016) (Harmoni’s Letter 3/29/16) at Ex. 5.

<sup>163</sup> See Petitioners’ First Case Brief at 15-16 (citing Harmoni’s Letter 3/29/16 at Ex. 5, paragraph 10).

- As business partners, Mr. Bai and Mr. Wang are affiliated with each other, and the QTF-entity, under sections 771(33)(C) and (G) of the Tariff Act of 1930, as amended (the Act).<sup>164</sup>
- After Golden Bird received the China-wide cash deposit rate of \$4.71 per kilogram, “QTF suddenly started shipping substantial volumes of subject merchandise to the U.S. market” at a ‘combination’ cash deposit rate of \$0.35 per kilogram.<sup>165</sup> This “can only plausibly be explained by coordination at a management or ownership level between these Chinese exporters of fresh garlic.”<sup>166</sup>
- “The QTF phase of the Golden Bird/QTF funneling scheme continued into POR 21, during which 10,000 MT (publicly ranged) were illegally entered at QTF’s \$0.35/kg deposit rate instead of the China-wide rate, which resulted in the avoidance of an additional \$44.6 million in cash deposits on those entries.”<sup>167</sup>
- QTF also shipped subject merchandise to the United States that was packed in Golden Bird packaging during this POR.<sup>168</sup> The funneling scheme of the QTF-entity constitutes a major fraud on the Department’s proceedings. “Any doubt that the thirteen-affiliate QTF-entity has existed for years as a criminal enterprise is dispelled by this segment’s substantial record evidence, which reveals the fraudulent duty-avoidance funneling scheme that entity conducted through the zero and relatively low cash deposit rates of its affiliates Golden Bird and QTF over PORs 17 through 21.”<sup>169</sup>
- The funneling scheme has also deprived the petitioners of the remedies intended by Congress through the antidumping laws against dumped fresh garlic imports from the PRC, “and ultimately will deprive U.S. taxpayers of an estimated \$460 million in avoided antidumping duties.”<sup>170</sup>
- The QTF-entity’s actions are also punishable under a range of U.S. criminal statutes, such as 18 U.S.C. section 542, and 18 U.S.C. section 545.<sup>171</sup>
- The CIT and the Court of Appeals for the Federal Circuit (CAFC) have found that it is the Department’s obligation to confront and address record evidence of fraud on its proceedings.<sup>172</sup>
- The CAFC has also explained that a fraud on the Department’s proceedings “‘is a wrong against the institutions set up to protect and safeguard the public.’”<sup>173</sup>

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<sup>164</sup> *Id.* (citing sections 771(33)(C) and (G) of the Act).

<sup>165</sup> *Id.* at 45; *see also Fresh Garlic from the People’s Republic of China: Final Results and Rescission, In Part, of Twelfth New Shipper Reviews*, 73 FR 56550 (September 29, 2008); *see also* Petitioners’ Letter 4/5/16 at 36.

<sup>166</sup> *See* Petitioners’ First Case Brief at 22-23 (citing Petitioners’ Letter, “21<sup>st</sup> Administrative Review of Fresh Garlic from the People’s Republic of China – Petitioners’ Comments in Support of Harmoni’s Fraud Claim” (April 5, 2016) (Petitioners’ Letter 4/5/16)).

<sup>167</sup> *Id.* at 45-46.

<sup>168</sup> *Id.* at 23-24 (citing to Harmoni’s Letter 3/29/16 at 33-35 and Ex. 36).

<sup>169</sup> *Id.* at 25-26.

<sup>170</sup> *Id.* at 26.

<sup>171</sup> *Id.* at footnote 33 (citing 18 U.S.C. section 371; *see also Hammerschmidt v. United States*, 265 U.S.182, 188 (1924) (*Hammerschmidt*); *see also Tanner v. United States*, 483 U.S. 107, 128 (1987) (*Tanner*); *see also United States v. Tuohey*, 867 F.2d 534,537 (9<sup>th</sup> Cir. 1989) (*Tuohey*)).

<sup>172</sup> *Id.* at 26-27 (citing *Home Prods. Int’l v. United States*, 633 F.3d 1369, 1378 (Fed. Cir. 2011)(*Home Products*)).

<sup>173</sup> *See* Petitioners’ First Case Brief at 27 (citing *Tokyo Kikai Seisakusho, Ltd. v. United States*, 529 F.3d 1352, 1361 (Fed. Cir. 2008) (*Tokyo Kikai*), citing *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246 (1944)

- The Department mistakenly found that QTF was eligible for a separate rate despite its withholding information concerning its affiliates.<sup>174</sup>
- “The pertinent information that QTF withheld...specifically relates to the Department’s separate rate analysis. In fact, each of the questions to which QTF failed to fully respond are contained in the sections titled “Separate Rates” and “Corporate Structure and Affiliations” in the Department’s section A questionnaire.<sup>175</sup>
- Absent complete and accurate responses to these questions, the Department should find that the QTF-entity is not eligible for a separate rate because the information withheld by the QTF-entity has been found to be a “core” aspect of the Department’s separate rate analysis by the Federal Circuit.<sup>176</sup>

### **QTF’s Case Brief**

- The application of AFA to QTF is not warranted because the Department did not conclude that QTF “failed to cooperate by not acting to the best of its ability to comply.”<sup>177</sup>
- “The Department must show a willfulness on the part of the respondent or behavior below the standard of a reasonable respondent in order to apply adverse inferences.”<sup>178</sup>
- The Department is required to “promptly inform the person submitting the response of the nature of the deficiency,” and, “provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established...”<sup>179</sup>
- The Court has found that “antidumping laws intend to calculate antidumping duties on a fair and equitable basis.”<sup>180</sup> “The antidumping and countervailing duty laws are designed to favor disclosure and cooperation.”<sup>181</sup>
- QTF interpreted question 3c in section A of the initial questionnaire to be requesting information on QTF’s affiliated companies, including companies that are affiliated for any of the reasons mentioned in 19 CFR 351.102 and Appendix 1 of the initial questionnaire.<sup>182</sup>
- In *Nippon Steel*, the court found that “best of its ability” is synonymous to “the maximum (a respondent) is able to do.”<sup>183</sup> QTF responded to the initial questionnaire to the best of its ability, and QTF reasonably interpreted the question, and provided full and complete answers based on its interpretation.<sup>184</sup>

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(*Hazel-Atlas*); see also *Wooden Bedroom Furniture from the People’s Republic of China: Final Results and Final Rescission in Part*, 77 FR 51754 (August 27, 2012), IDM at 3-4 (*Wooden Bedroom Furniture*)).

<sup>174</sup> *Id.* at 79, (citing PDM at 13).

<sup>175</sup> *Id.* at 80.

<sup>176</sup> *Id.* (citing *Ad Hoc Shrimp Trade Action Comm. v. United States*, 802 F.3d 1339 (Fed. Cir. 2015) at 1354-1358 (*Ad Hoc Shrimp 2015*)).

<sup>177</sup> See QTF’s Case Brief at 2-3 (citing *Borden, Inc. v. United States*, 4 F. Supp. 2d 1221 (CIT 1998) at 1246 (*Borden*)).

<sup>178</sup> *Id.* at 3 (citing *Steel Auth. of India v. United States*, 149 F. Supp. 2d 921 (CIT 2001) (*Steel Auth of India*) at 489).

<sup>179</sup> *Id.* at 3 (citing *Steel Auth of India* at 485).

<sup>180</sup> *Id.* at 4 (citing *SNR Roulements v. United States*, 118 F. Supp. 2d 1333 (Fed. Cir. 2005) (*SNR Roulements*), at 1363).

<sup>181</sup> *Id.* at 4 (citing *Böwe-Passat v. United States*, 17 F. Supp. 335 (CIT 1993) (*Bowe-Passat*) at 337).

<sup>182</sup> *Id.* at 6.

<sup>183</sup> See QTF’s Case Brief at 6 (citing *Nippon Steel*).

<sup>184</sup> *Id.* at 6-7.

- “QXF and QTF are two separate and distinct entities because they have separate ownership, separate management, separate finances. QXF and QTF do not exercise control over each other.”<sup>185</sup> The other companies collapsed by the Department are also separate legal entities where the only common denominator is the familial relationship through the Bai brothers.<sup>186</sup>
- QTF did not intend to hide the familial ties, it simply did not understand that the reporting of the occupation of its legal representative’s family members was relevant.
- The Department’s application of the AFA China-wide cash deposit rate, without advising QTF of the deficiency, is excessive.
- In *Mukand, Ltd. v. United States* the Department issued an AFA finding after five rounds of questionnaires.<sup>187</sup> The Department’s finding is “unfair and out of balance, in violation of fundamental fairness principles of antidumping law such as they are articulated in *SNR Roulements* and *Bowe-Passat*.”<sup>188</sup>
- The Department should issue a post-preliminary supplemental questionnaire to allow QTF to submit missing information concerning affiliation. If not, the Department should modify its imposition of total AFA and impose a lesser punitive measure.<sup>189</sup>
- Partial AFA is utilized when the deficiency is only “with respect to a discrete category of information, where there is usable information of record but the record is incomplete.”<sup>190</sup>
- “It is abundantly clear from the public records that QTF is a separate legal and operational entity from QXF, QTHF, QBT, and Lianghe.”<sup>191</sup>
- “Partial AFA would allow QTF to have separate rate status, such as its highest calculated rate from the past, or the weighted average margin for the non-selected companies.”<sup>192</sup>
- Even though companies may be affiliated, the Department must show that there is a significant potential for the manipulation of price or production in order to collapse the companies. The potential for manipulation must be significant, the possibility of manipulation does not warrant collapsing.<sup>193</sup>
- To make a finding of a significant potential for manipulation, the Department must determine that there is more than “mere affiliation” between entities.<sup>194</sup> Under 19 CFR 351.401(f)(1), “the evidence required to justify a collapsing determination ‘goes beyond that which is necessary to find common control.’”<sup>195</sup>

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<sup>185</sup> *Id.* at 8.

<sup>186</sup> *Id.* at 8.

<sup>187</sup> *Id.* at 9 (citing *Mukand, Ltd. v. United States*, No. 11-00401 (CIT 2013). (*Mukand*))

<sup>188</sup> *Id.* at 10 (citing *SNR Roulements*; see also *Bowe-Passat*)

<sup>189</sup> *Id.* at 11.

<sup>190</sup> *Id.* at 11 (citing *Foshan Shunde Housewares & Hardware Co. v. United States*, Slip Op. 11-123, (CIT 2011) (*Foshan Shunde*); see also *Washington International Insurance Company v. United States*, Slip Op. 09-78, (CIT 2009) (*Washington International*)).

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

<sup>193</sup> *Id.* at 15, (citing *Crawfish Processors Alliance v. United States*, 395 F. Supp. 2d 1330 (CIT 2005) at 1336 (*Crawfish Processors*); see also *AK Steel Corp. v. United States*, 34 F. Supp. 2d 756 (CIT 1998) at 764 (*AK Steel*)).

<sup>194</sup> See QTF’s Case Brief at 15 (citing *Chia Far Indus. Factory Co. v. United States*, 343 F. Supp. 2d 1334 (CIT 2004) at 1371 (*Chia Far*)).

<sup>195</sup> *Id.* (citing *Allied Tube and Conduit Corp. v. United States*, 127 F. Supp. 2d 207 (CIT 2000) at 222 (*Allied Tube*), citing *Certain Welded Carbon Steel Pipes and Tubes from Thailand*, 63 FR 55578 (October 16, 1998) at 55583 (*Thai Pipes and Tubes*)).

- “Indicating that there *may* be significant potential (for manipulation) does not meet the requirements of 19 C.F.R. 351.401(f).”<sup>196</sup>
- QTF has stated that Bai Leiwen and Mr. Bai are brothers, but mere family relationships do not provide a basis to collapse entities per Department policy.<sup>197</sup>
- “There is no meaningful evidence that there was a significant potential for the manipulation of price or production between QTF and any other entity.”<sup>198</sup>
- Finally, the Department cannot collapse QTF with any other entity because the requirements of 351.401(f) cannot be met.<sup>199</sup>

### **Petitioners’ First Rebuttal Brief**

- By failing to disclose its affiliation information with four individuals and four companies, following the Department’s request of additional information pursuant to section 783(d) of the Act, the QTF-entity withheld information the Department had requested, failed to provide such information by the deadlines established, and significantly impeded the proceeding.<sup>200</sup>
- The Department’s preliminary decision to rely on AFA in calculating the QTF-entity’s margin was appropriate per the standard established in section 776(b) of the Act and *Nippon Steel*, as the QTF-entity clearly did not “do the maximum it {was} able to do” in supplying the Department with information about its affiliations.<sup>201</sup>
- The Department’s reliance on total AFA was not excessive and punitive,<sup>202</sup> because the missing information, withheld by the QTF-entity, was core to the Department’s investigation and “critical to the Department’s calculation of an accurate dumping margin for that respondent.”<sup>203</sup>
- The Department may collapse two or more affiliated producers into a single entity when there is a “significant potential for manipulation of price or production” demonstrated by “the level of common ownership.”<sup>204</sup>
- As the Department explained, its decision to collapse was based on the QTF-entity’s failure to cooperate: the QTF-entity’s failure to cooperate “prevented {the agency} from fully investigating the collapsing factors under section 351.401(f).”<sup>205</sup>

### **Department’s Position:**

As explained in the *Preliminary Results*, the Department relies on questionnaire responses regarding a mandatory respondent’s affiliations, relationships, and connections with other

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<sup>196</sup> *Id.* at 16.

<sup>197</sup> *Id.* at (citing *Thai Pipes and Tubes*; see also *Catfish Farmers of Am. v. U.S.*, 33 C.I.T. 1258 (CIT 2009) at 1256 (*Catfish Farmers*)).

<sup>198</sup> *Id.* at 16.

<sup>199</sup> *Id.* at 16.

<sup>200</sup> See Petitioners’ First Rebuttal Brief at 4-6 (citing sections 777(a) and 783(d) of the Act).

<sup>201</sup> *Id.* at 6 (citing *Nippon Steel* at 1382).

<sup>202</sup> *Id.* at 7 (citing QTF’s Case Brief at 5-12).

<sup>203</sup> *Id.* at 6-7 (citing *FGPA II* at 1324-5).

<sup>204</sup> at 9-10 (citing 19 CFR 351.401(f)(1)-(2) and QTF’s Case Brief at 14-16).

<sup>205</sup> See Petitioners’ First Rebuttal Brief at 10 (citing PDM at 10-11, 17; see also *Zhaoqing New Zhongya Aluminum Co. v. United States*, 70 F. Supp. 3d 1298, 1305-06 (CIT 2015) (*Zhaoqing New Zhongya*)).

foreign producers or exporters of subject merchandise.<sup>206</sup> This information forms the basis of the Department's determination as to whether a respondent should be collapsed with other producers or exporters. The Department asked QTF for this information, and QTF submitted false and incomplete information regarding its affiliations, withheld information that had been requested by the Department, and significantly impeded the proceeding, as defined under section 776(a)(2) of the Act.<sup>207</sup> Given QTF's submission of false and incomplete information, the Department preliminarily found, and continues to find here, that the application of facts available with an adverse inference is warranted.<sup>208</sup> In the *Preliminary Results* the Department explained that its adverse inference is based on a finding that QTF and its affiliated companies, QTHF, QXF, QBT, and Lianghe, should be collapsed into a single entity, which we coined "the QTF-entity."<sup>209</sup>

The above circumstances have not changed since the *Preliminary Results*, and as such, the Department has continued to apply total AFA to the QTF-entity for these *Final Results*. As discussed below, the Department has found the QTF-entity to be part of the PRC-wide entity. The Department has also revisited its affiliation findings concerning the QTF-entity, and for these *Final Results*, the Department finds that the QTF-entity (*i.e.*, QTF, QTHF, QXF, QBT, and Lianghe) is also affiliated with Golden Bird and Huamei Consulting. We note that the petitioners and Harmoni allege, and the Department agrees, that Golden Bird was licensing its low cash deposit rate to other Chinese exporters.<sup>210</sup> A part of the scheme includes Golden Bird shipping the garlic, and the U.S. customers paying Lianghe, a member of the QTF-entity. Record evidence also shows that following Golden Bird's receipt of an AFA rate at the conclusion of the 18<sup>th</sup> administrative review, QTF began shipping large amounts of garlic to the United States.<sup>211</sup>

The QTF-entity is mistaken in its claim that, in the *Preliminary Results*, the Department did not find that the QTF-entity failed to cooperate.<sup>212</sup> In the *Preliminary Results*, the Department found that "QTF failed to cooperate to the best of its ability under section 776(b) of the Act, by not reporting the requested affiliates."<sup>213</sup> We agree with the QTF-entity that the antidumping laws intend that the Department will calculate antidumping duties on a fair and equitable basis. However, the QTF-entity's reliance on *SNR Roulements* is misplaced. In *SNR Roulements*, the CAFC took issue with the Department's decision to exclude certain adjustments to the respondent's U.S. credit and inventory carrying costs.<sup>214</sup> In this case, we are not calculating a margin for the QTF-entity because we have found the QTF-entity to be part of the PRC-wide entity. We also agree that "the antidumping and countervailing duty laws are designed to favor

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<sup>206</sup> See PDM at 17.

<sup>207</sup> *Id.*

<sup>208</sup> *Id.*

<sup>209</sup> *Id.*

<sup>210</sup> See Harmoni's Case Brief at 20 (citing Petitioners' Letter 4/5/2016 at 10).

<sup>211</sup> See Petitioners' First Case Brief at 45 (citing to Petitioners' Letter 4/5/16 at 36).

<sup>212</sup> See QTF's Case Brief at 2-3.

<sup>213</sup> See PDM at 17.

<sup>214</sup> See *SNR Roulements* at 1363.

disclosure and cooperation.”<sup>215</sup> In this case, the QTF-entity failed to cooperate to the best of its ability by not disclosing its multiple affiliations.

In *Wooden Bedroom Furniture*, the respondent requested a review of itself and then sought a substantial payment from the U.S. importer of its sales in order to participate in the review, and therefore, avoid AFA.<sup>216</sup> There is no record evidence in this case to conclude that the QTF-entity was involved in that type of conduct before the Department. However, we find that the cases are similar because, in both situations, respondents were attempting to undermine the administrative review process. We agree with the petitioners’ citation to and reliance on *Tokyo Kikai and Hazel-Atlas*, to support this finding. The Department has determined that QTF failed to cooperate to the best of its ability under section 776(b) by not providing complete affiliation information, and as such, the Department has at its disposal the option to apply an adverse inference. Accordingly, the Department is continuing to collapse the QTF-entity with its named affiliates. As for the petitioners’ reliance on *Hammerschmidt, Tuohey, and Tanner*, it is not within the Department’s purview to pursue allegations of violations of the cited criminal statutes.

Section 771(33)(A) of the Act clearly states that “members of a family, including brothers and sisters...” shall be considered to be affiliated. The Department’s questionnaire clearly instructed QTF to “provide a list of names and addresses of all companies affiliated with your company through stock ownership or otherwise...describe also the activities of each affiliated company, with particular attention to those involved with the merchandise under consideration.”<sup>217</sup> We also note that the Department instructed QTF to contact the Department if it had difficulty in responding to a question.<sup>218</sup> It did not make any such inquiry.

The QTF-entity, and its counsel, have repeatedly participated in multiple segments of this proceeding, as well as other proceedings before the Department, and subsequent litigation for many years.<sup>219</sup> At no time in this review did the QTF-entity or its counsel notify the Department that it did not understand the question(s) at issue.

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<sup>215</sup> See *Bowe-Passat* at 337.

<sup>216</sup> See *Wooden Bedroom Furniture*, IDM at 3-4.

<sup>217</sup> See Department Letter re: Antidumping Duty Questionnaire, dated March 7, 2016 (Initial QTF Questionnaire) at A-6.

<sup>218</sup> *Id.* at G-1.

<sup>219</sup> See e.g., *Fresh Garlic from the People’s Republic of China: Final Results and Final Rescission of the 20<sup>th</sup> Antidumping Duty Administrative Review; 2013-2014*, 81 FR 39897 (June 20, 2016) (*Garlic 20 Final*); *Fresh Garlic from the People’s Republic of China: Final Results and Partial Rescission of the 19<sup>th</sup> Antidumping Duty Administrative Review; 2012-2013*, 80 FR 34141 (June 15, 2015). Additionally, counsel is experienced in administrative proceedings before the Department, as well as litigation involving the same. See e.g., *Jinan Yipin Corp. v United States*, 526 F. Supp. 2d 1347 (CIT 2007) (counsel for plaintiff in a challenge to the Department’s final results of an administrative review of garlic from China); *Dongtai Peak Honey Indus. v United States*, 777 F.3d 1343 (CIT 2015) (counsel for plaintiff in a challenge to certain aspects of the Department’s final determination in a review of honey from China); *Shanghai Taoen Int’l Trading Co. v. United States*, 360 F. Supp. 2d 1339 (CIT 2005) (counsel for plaintiff in a challenge to the Department’s final determination in a review of freshwater crawfish tail meat from China); *Xiping Opeck Food Co. v. United States*, Slip Op. 2017-389 (CIT 2017) (counsel for plaintiff in a challenge to the Department’s final determination in a review of freshwater crawfish tail meat from China).



The Department also notes that the QTF-entity's citations to and reliance on *Borden, Steel Auth. of India*, *Nippon Steel*, and *Mukand* to support its claim that the Department is not justified in applying AFA for failure to provide complete information regarding its affiliations are misplaced, because the facts of those cases and the Department's explanations in its final determinations are distinguishable from the circumstances surrounding the QTF-entity's failure to cooperate here.

Unlike the QTF-entity in the instant review, the respondent in *Borden* was eligible for a calculated separate rate. In this review, the Department has found that the QTF-entity is not eligible for a separate rate because of its failure to provide complete information regarding its affiliations. In *Steel Auth. of India*, the Court remanded the Department's application of AFA to a respondent that was unable to gather and compile all of the requisite data requested by the Department because the Department did not identify and explain its reasons for concluding that the respondent had refused to cooperate to the best of its ability.<sup>220</sup> Further, in that case, the respondent company repeatedly had alerted the Department to the difficulties it experienced in gathering the requested information.<sup>221</sup> In this case, the QTF-entity had ready access to information on how it was affiliated with multiple companies through the familial affiliations described in section 771(33)(A) of the Act. The QTF-entity never alerted the Department that it had difficulty identifying all responsive information, or that it required clarification as to the scope or meaning of the question. Moreover, the Department in the instant case has clearly identified and explained the reasons for concluding that the QTF-entity failed cooperate to the best of its ability.<sup>222</sup>

Regarding *Mukand*, the QTF-entity notes that the respondent in that case was given five chances to correct issues with its reported data, while contending that the Department did not afford it any opportunity to remedy its deficient response. We note that the information at issue in *Mukand* (i.e., a cost of production database that broke down the cost of producing the subject merchandise by product size) is much more complicated than standard affiliation information requested of respondents in all Department AD proceedings.<sup>223</sup> Thus, the Department reasonably gave that respondent multiple opportunities to create and report a cost methodology and database that did not already exist, prior to the Department's requests for it. In this review, once QTF confirmed that Mr. Bai Wenxuan was the brother of QTF's legal representative Mr. Bai Leiwen, the Department had already collected the required information to complete its analysis of the QTF-entity's affiliations. Unlike in *Mukand*, QTF's affiliation information is kept and or known through the normal course of business; therefore, the Department's issuance of a single supplemental questionnaire was reasonable, to obtain the missing affiliation information.

Finally, the Court in *Nippon Steel* stated that the "best of its ability" standard means "the maximum (a respondent) is able to do." The QTF-entity cites *Nippon Steel* to support its claim that the Department failed to provide the basis for whether AFA is warranted, but in fact, *Nippon*

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<sup>220</sup> See *Steel Auth. of India*.

<sup>221</sup> *Id.* at 490.

<sup>222</sup> See PDM at 14-17.

<sup>223</sup> See the Department's Antidumping Questionnaires, found at <http://enforcement.trade.gov/questionnaires/questionnaires-ad.html>

*Steel* supports the Department’s conclusion that the QTF-entity willfully withheld information requested of it by the Department. The Department followed the Court’s guidance in *Nippon Steel* and finds that the QTF-entity failed to cooperate to the best of its ability, and AFA is warranted:

Before making an adverse inference, Commerce must examine respondent's actions and assess the extent of respondent's abilities, efforts, and cooperation in responding to Commerce’s requests for information. Compliance with the “best of its ability” standard is determined by assessing whether respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation. While the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping. It assumes that importers are familiar with the rules and regulations that apply to the import activities undertaken and requires that importers, to avoid a risk of an adverse inference determination in responding to Commerce’s inquiries: (a) take reasonable steps to keep and maintain full and complete records documenting the information that a reasonable importer should anticipate being called upon to produce; (b) have familiarity with all of the records it maintains in its possession, custody, or control; and (c) conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of the importers’ ability to do so.<sup>224</sup>

The information in question (*i.e.*, the identity of the QTF-entity’s affiliates) is the type of information that should be readily available to the QTF-entity and is critical to the Department’s separate rate analysis.<sup>225</sup> The Department asked for this information in its questionnaire, and the QTF-entity, a sophisticated company with experienced counsel, did not provide it. If, in fact, the QTF-entity was confused as to the scope or meaning of the question, it did not seek clarification from the Department. Clearly, the QTF-entity and its counsel did not make a reasonable effort to interpret the relevant section of the Act and provide the Department with the relevant requested information.

We note the QTF-entity’s inaccurate responses with respect to its affiliations were in response to questions in the “Separate Rate” section of the Department’s questionnaire.<sup>226</sup> Thus, the specific information misreported by the QTF-entity is critical to the Department’s separate rate analysis. We note that, without accurate information on the QTF-entity’s affiliations, the Department has no basis for determining that the QTF-entity is eligible for a separate rate.<sup>227</sup> Information on the

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<sup>224</sup> See *Nippon Steel*, 337 F.3d at 1382.

<sup>225</sup> See *e.g.*, *Ad Hoc Shrimp 2015*.

<sup>226</sup> See Initial QTF Questionnaire at A5-A6.

<sup>227</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>; see also *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*).

record of this review confirms that the QTF-entity is affiliated with companies that are part of the PRC-wide entity,<sup>228</sup> and therefore the Department finds that it cannot rely on other information in QTF's section A response as the basis for granting the QTF-entity a separate rate. We also disagree with the QTF-entity's reliance on *Foshan Shunde* and *Washington International* to argue that the Department should apply some form of partial AFA (*i.e.*, "an appropriate separate rate") to the QTF-entity. The affiliation information in question is the type of information that a respondent should reasonably be able to provide and is critical to the Department's dumping analysis. Thus, we find that the QTF-entity should have been able to provide this information if it had made the appropriate effort when it received the Department's antidumping duty questionnaire and that there is no basis to apply partial AFA.

Finally, we also disagree with the QTF-entity's argument that the Department cannot collapse the QTF-entity with any other entity because the requirements of 19 C.F.R. 351.401(f) cannot be met. As stated in the PDM:

QTF's failure to provide complete information regarding its affiliations prevented us from fully investigating the collapsing factors under section 351.401(f), but the record indicates that some of these affiliates engage in garlic production and that there may be a significant potential for the manipulation of price or production. QTF should not benefit from its failure to provide requested information; therefore, an adverse inference that its affiliates should be collapsed is appropriate.<sup>229</sup>

The Department notes that the QTF-entity's reliance on *Crawfish, AK Steel, Chia Far, Allied Tube, Catfish Farmers, and Thai Pipes and Tubes* is flawed. In those cases, the court found that the Department could not collapse affiliates merely because they are affiliated. Rather, the Department must make three separate findings in accordance with section 771(33) of the Act, and guided by 19 CFR 351.401(f)(1).<sup>230</sup> However, QTF's arguments side step that in this review, the QTF-entity did not provide any information on its unreported affiliates. Rather, the QTF-entity provided false or incomplete information on this matter. Thus, the Department was unable to fully investigate the collapsing factors due to the QTF-entity's failure to provide the relevant affiliation information. The QTF-entity cannot benefit from this failure.

In addition, evidence on the record of this administrative review shows that subject merchandise shipped to the United States during the POR in bags labeled with Golden Bird's name, was actually QTF's garlic.<sup>231</sup> Therefore, to the extent that the Department considers whether there is a significant potential for manipulation, pursuant to 19 CFR 351.401(f)(2), evidence on the

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<sup>228</sup> See Memorandum, "Qingdao Tiantaixing Foods Co., Ltd. (QTF) Affiliation Documents," dated December 5, 2016 (QTF Affiliation Memorandum).

<sup>229</sup> See PDM at 17.

<sup>230</sup> See *Allied Tube*, 127 F. Supp. 2d at 221, ("Commerce must make three separate findings. First, Commerce must determine whether the companies are affiliated pursuant to 19 U.S.C. § 1777(33)(f). Second, Commerce must determine the existence of overlapping production facilities for similar or identical products that would not require retooling in order to restructure the companies' manufacturing priorities. See 19 C.F.R. § 351.401(f)(1). Third, Commerce must find the affiliated companies are sufficiently intertwined as to permit the significant possibility of price or production manipulation. See *id.*").

<sup>231</sup> See Harmoni's Letter 3/29/16 at Ex. 36.

record of this proceeding indicates that there is significant potential for the manipulation of price or production of QTF's garlic.

### **Comment 5: The Department's Application of the \$4.71 per kilogram AFA Rate**

#### **QTF's Case Brief**

- The Department is legally required to apply the most accurate rates possible to individual respondents.<sup>232</sup> The decision to apply an AFA rate to QTF that is not based on QTF's sales and production data for the current POR would violate this requirement because the Department would be using outdated information that has nothing to do with QTF's current prices or production costs.<sup>233</sup>
- Section 776(c) of the Act states that, to the extent practicable, the Department shall corroborate that information from independent sources that are reasonably at its disposal.<sup>234</sup>
- The Department must compare the information relied upon to the independent sources to see if it has selected “secondary information that has some grounding in commercial reality of the respondent during the POR.” “Substantial evidence requires Commerce to show some relationship between the AFA rate and the actual dumping margin”<sup>235</sup> and that the Department must also “demonstrate that the rate is reliable and relevant to the particular respondent...and show that it used reliable facts that had some grounding in commercial reality.”<sup>236</sup>
- If the Department uses a rate identical to the PRC-wide entity rate for a respondent eligible for a separate-rate, “more is required than the mere assertion that the rate is corroborated because it has been used as the entity-wide rate.”<sup>237</sup>
- The Department's application of the \$4.71 per kilogram rate is improper on its face considering the Department's statement that “it is not necessary to corroborate this margin, because it has been applied in prior segments of this proceeding.”<sup>238</sup> This is clear violation of the Department's statutory duty to corroborate the margin.

#### **Petitioners' Rebuttal Brief**

- QTF's reliance on pre-Trade Preferences Extension Act (TPEA) case law to argue that the Department did not sufficiently corroborate its \$4.71 per kilogram margin for QTF is misplaced.<sup>239</sup>
- Pursuant to section 776(c) of the Act, the Department may rely upon secondary information such 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.”

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<sup>232</sup> See QTF's Case Brief at 13 (citing *Shakeproof Assembly*).

<sup>233</sup> *Id.* at 13.

<sup>234</sup> *Id.* at 13 (citing section 776(c) of the Act.)

<sup>235</sup> *Id.* at 13 (citing *Gallant Ocean (Thai.) Co. v. United States*, 602 F.3d 1319 (Fed. Cir. 2010) (*Gallant Ocean*) at 1324).

<sup>236</sup> *Id.* at 13 (citing *Tianjin Mach. Imp. & Exp. Corp. v. United States*, Slip Op. 12-83 (CIT 2012) (*Tianjin Mach.*) at 6-7).

<sup>237</sup> *Id.* at 14 (citing *Foshan Shunde*).

<sup>238</sup> *Id.* at 14 (citing PDM at 17).

<sup>239</sup> See Petitioners' Rebuttal Brief at 8.

When using such information, it is not “required to corroborate any dumping margin or countervailing duty applied in a separate segment of the same proceeding.”<sup>240</sup>

### **Department’s Position:**

As noted above/below, we have found QTF to be part of the PRC-wide entity for these *Final Results*, because of its affiliation with a member of the PRC-wide entity. The PRC-entity is not under review in this administrative review, because no party requested a review of the PRC-entity. This means that the \$4.71 per kilogram PRC-entity rate is not subject to change in this review.<sup>241</sup> Accordingly, the parties’ arguments regarding this rate are moot.

### **Comment 6: Whether the Department Properly Calculated Xinboda’s EP**

#### **Xinboda’s Second Case Brief**

- Xinboda reported that all its sales were EP, were made on an “FOB” basis, and did not report ocean freight in its U.S. sales file.<sup>242</sup> Its sales documentation confirms that the sales were “FOB,” Chinese port.<sup>243</sup>
- The Department had no basis to deduct ocean freight from Xinboda’s sales; and if it had any idea that the “FOB” designation all over Xinboda’s commercial documents was in any way ambiguous, it was obligated to ask for clarification.<sup>244</sup>
- By the Department’s logic, all companies that sell “free on board” necessarily sell “cost, insurance, freight” or “CIF” instead because they present a copy of the bill of lading to the importer.<sup>245</sup>
- The Department’s preliminary decision to deduct estimated or deposited antidumping duties from Xinboda’s EP sales was based on an estimated surrogate margin, *i.e.* \$1.82 per kilogram from the previous administrative review. The Department calculated a rate of dumping in the preliminary results, so it was highly inappropriate and unlawful for the Department to substitute a surrogate (the estimated/deposited amount) for the actual amount calculated and assessable.<sup>246</sup>
- 19 CFR 351.402(f) is clear that only the assessed finally calculated antidumping duties are deducted from EP sales – not an estimated deposit rate that is replaced with the POR-accurate assessment rate.<sup>247</sup>

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<sup>240</sup> *Id.* at 8 (citing section 777(b)(2), (c)(1)-(2), (d)(1)(B), and (d)(2)).

<sup>241</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 (November 4, 2013).

<sup>242</sup> See Xinboda’s Second Case Brief at 2.

<sup>243</sup> *Id.* at 2.

<sup>244</sup> *Id.* at 3-5 (citing section 782(d) of the Act).

<sup>245</sup> *Id.* at 4.

<sup>246</sup> *Id.* at 5.

<sup>247</sup> See Xinboda’s Second Case Brief at 6 (citing *Hoogovens Staal BV v. United States*, 4 F. Supp. 2d 1213, 1217, (CIT 1998) (*Hoogovens Staal*); see also *Ad Hoc Shrimp Trade Action Comm. V. United State*, 925 F. Supp. 2d 1367, 1375-6 (CIT 2013) (*Ad Hoc Shrimp 2013*); see also *Apex Exps. V. United States*, 777 F.3d 1373, 1381 (Fed. Cir. 2015) (*Apex Exps*); see also *Zhengzhou Huachao Indus. Co., Ltd. v. United States*, No. 11-00139, Slip-Op. at 42 (CIT 2013) (*Zhengzhou Huachao*); see also *Nereida Trading Co., Inc. v. United States*, 683 F. Supp. 2d 1348, 1352 (2010) (*Nereida Trading*); see also *All Tools, Inc. v. United States*, 34 CIT 1318, 1319 (CIT 2010) (*All Tools*); see also *Guangdong Wireking Housewares & Hardware Co. v. United States*, 745 F.3d 1194, 1206 (Fed. Cir. 2014) (*Guangdong Wireking*); see also *Nucor Corp. v. United States*, 414 F.3d 1331, 1336 (Fed. Cir. 2005) (*Nucor*)).

- The Department’s deduction to EP was punitive, and based on a higher amount of estimated dumping duties that has been reversed by the Court.<sup>248</sup>
- If the Department correctly chooses Mexico as the surrogate country, there should be no deduction from EP.<sup>249</sup> If the Department selects Romania and Romanian garlic bulb, then there would be a much smaller amount of antidumping duty assessable.<sup>250</sup>

### **Petitioners’ Second Rebuttal Brief**

- Based on substantial record evidence that Xinboda incurred the relevant expenses, the Department made appropriate adjustments to Xinboda’s export price.<sup>251</sup>
- Xinboda’s reliance on *Apex Exps*<sup>252</sup> is misplaced. The appellant argued the plain language of section 772(c)(2) denied the Department "any authority to refuse to make such deductions." In contrast, here, the Department is not deducting from EP an amount for antidumping duties and is not refusing to make a deduction from EP.<sup>253</sup>

### **Department’s Position**

The Department has made no changes to its calculation of Xinboda’s EP for these *Final Results*. As discussed in the Department’s Preliminary Analysis Memorandum,<sup>254</sup> Xinboda reported, on several occasions, that its terms of sale were FOB and explicitly stated that it “did not incur international freight for its sales of the subject merchandise to the United States during the POR.”<sup>255</sup> In contrast to these statements, Xinboda also reported in its original and supplemental questionnaire responses that it paid fees and expenses not associated with FOB Chinese Port terms of sale (*e.g.* U.S. duties). Our analysis of the bills of lading contained in the sales packages submitted by Xinboda, as well as those contained in the entry packages obtained from CBP for each sale made by Xinboda during the POR, confirm our preliminary finding on this issue. Moreover, we note that Xinboda has not provided any information which would cause us to reconsider our finding that Xinboda paid the international ocean freight for its U.S. sales for these *Final Results*.

Xinboda’s reliance on section 782(d) of the Act with respect to the issue of ocean freight is also misplaced. The record of this review shows that Xinboda had several opportunities to submit accurate international movement expenses. In the Department’s standard non-market economy (NME) AD questionnaire, the Department requests information regarding international movement expenses.<sup>256</sup> In Xinboda’s October 17, 2016 supplemental questionnaire, the Department requested full sales traces to verify Xinboda’s reported sales information.<sup>257</sup> Moreover, Xinboda had the opportunity to rebut or clarify information contained in the bills of

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<sup>248</sup> *Id.* at 7.

<sup>249</sup> *Id.* at 7.

<sup>250</sup> *Id.* at 7.

<sup>251</sup> See Petitioners’ Second Rebuttal Brief at 2-6 (citing section 772(c)(2)(A)).

<sup>252</sup> *Id.* at 6 (citing *Apex Exps*).

<sup>253</sup> *Id.* (citing *Apex Exps.* at 1374, 1376)

<sup>254</sup> See PDM at 32 (citing to Memorandum, “Administrative Review of Fresh Garlic from the People’s Republic of China: Calculation Memorandum for the Preliminary Results of Shenzhen Xinboda Industrial Co., Ltd.” (December 5, 2016).

<sup>255</sup> See Xinboda’s Second Case Brief at 3

<sup>256</sup> See, *e.g.*, Initial QTF Questionnaire.

<sup>257</sup> See Xinboda’s October 16, 2016 Supplemental Questionnaire Response.

loading that were part of the entry packages placed on the record by the Department on December 5, 2016, and December 15, 2016.<sup>258</sup> In total, the Department gave Xinboda 25 days to rebut or comment on the contents of the CBP documentation. Xinboda did not provide any documentation to contradict the Department’s preliminary decision, nor did it supplement or correct the Department’s estimate of Xinboda’s international ocean freight expenses during the course of this review, or in its case and rebuttal briefs.

Xinboda also argues that the Department’s adjustments to its EP were flawed because we deducted “estimated” or “deposited” antidumping duties of \$1.82 per kilogram instead of “assessed” duties.<sup>259</sup> Xinboda correctly points to 19 CFR 351.402(f) and several proceedings<sup>260</sup> which state that the Department will deduct the amount of the antidumping duty which the exporter or producer reimbursed to the importer.<sup>261</sup> However, Xinboda also argues that 19 CFR 351.402(f)(2) requires that the Department must deduct “assessed” duties based on the preliminary results<sup>262</sup> instead of actual cash deposits collected at the time of entry and reimbursed by Xinboda. We note that 19 CFR 351.402(f)(2)(i) states that in calculating the export price (or the constructed export price), the Secretary will deduct the *amount* of any antidumping duty which the exporter or producer: (A) Paid directly on behalf of the importer; or (B) Reimbursed to the importer” (emphasis added).<sup>263</sup> Information on the record of this review clearly demonstrates that Xinboda reimbursed \$1.82 per kilogram.<sup>264</sup> Accordingly, the Department deducted the actual amount reimbursed, as opposed to the amount to be later assessed.

We note that *Hoogovens Staal* - which is relied upon by Xinboda to support its argument regarding the Department’s rationale for the reimbursement regulation – actually supports the Department’s deduction. In *Hoogovens Staal*, the CIT stated, “{w}here the antidumping duty is paid by the exporter, the importer acquires merchandise in the U.S. at less than a fair price, thus frustrating the purposes of the antidumping law. By assuming the cost of the antidumping duties – either through direct payment or reimbursement – the exporter effectively reduces the U.S. price.”<sup>265</sup> We note that by deducting the exact amount that Xinboda reimbursed,<sup>266</sup> the Department deducted the amount Xinboda effectively reduced the U.S. price.

Xinboda’s reliance on *Guangdong Wireking* and *Nucor* to support the proposition that the Department’s deduction of the fees at issue was punitive rather than remedial is misplaced and contradicted by earlier statements in its brief.<sup>267</sup> We note that in its argument pertaining to the

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<sup>258</sup> See Memorandum, “Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China: Shenzhen Xinboda Industrial Co., Ltd. (Xinboda) Customs Entry Documentation” (December 5, 2016) (Xinboda’s CBP Documents 12/5/16); see also Xinboda’s CBP Documents 12/15/16.

<sup>259</sup> See Xinboda’s Second Case Brief at 5.

<sup>260</sup> *Id.* at 6-7 (citing *Hoogovens Staal*; see also *Zhengzhou Huachao*; see also *Nereida Trading*; see also *Ad Hoc Shrimp 2013*; see also *All Tools*).

<sup>261</sup> *Id.* at 6.

<sup>262</sup> *Id.* at 5.

<sup>263</sup> See 19 CFR 351.402(f)(1)(i).

<sup>264</sup> See Xinboda’s November 3, 2016 Supplemental Questionnaire Response (Xinboda’s November 3, 2016 SQR).

<sup>265</sup> See Xinboda’s Second Case Brief at 6 (citing *Hoogovens Staal* at 1213, 1217).

<sup>266</sup> See Xinboda’s November 3, 2016 SQR.

<sup>267</sup> *Guangdong Wireking* referred to the Department’s imposition of AD and countervailing duties on NME countries, and whether the Department’s retroactive imposition violated the Ex Post Facto clause of the

purpose of the reimbursement regulation, and citing *Ad Hoc Shrimp*, Xinboda states, “{t}he reimbursement regulation is designed to ‘ensure that the ... incentive for importers to buy at non-dumped prices is not negated by exporters who ... remov[e] the importer’s exposure to antidumping liability.’”<sup>268</sup> Further, citing *Hoogovens Staal*, Xinboda states, “{t}he regulation creates an added disincentive for the exporter. If the exporter pays or reimburses for antidumping duties, Commerce will basically double count the antidumping margin.”<sup>269</sup> Thus, the Department’s deduction of the fees at issue is both remedial, and serves as a disincentive for Xinboda to continue to reimburse antidumping duties.

Lastly, as the petitioners note, Xinboda’s reliance on *Apex Exps* is misplaced. In contrast the case in question, the Department did not refuse to make a deduction from EP, but instead exercised its authority to make an adjustment to EP.<sup>270</sup>

For the BPI discussion of these issues, please see the Xinboda’s Final Calculation Memorandum.<sup>271</sup>

### **Comment 7: Whether the Department Should Rely on Total AFA in Assigning a Dumping Margin to Xinboda**

#### **Petitioners’ Second Case Brief**

- The information reported by Xinboda to the Department regarding the price/value of its shipments is widely divergent from the General Administration of Customs of the People’s Republic of China (GACC) data placed on the record by the petitioners.<sup>272</sup>
- Xinboda reported a total of 26 sales of subject merchandise during the POR, including 686,000 kilograms (publicly-ranged) of fresh peeled-clove garlic, with a total value of \$3,560,000 (publicly-ranged).<sup>273</sup> The average unit value of the sales reported by Xinboda to the Department is \$5.19 per kilogram.<sup>274</sup>
- Three benchmarks demonstrate that Xinboda’s reported export prices are significantly overstated.<sup>275</sup>

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Constitution; and *Nucor* referred to a U.S. International Trade Commission decision regarding material injury, where the President had imposed trade protection safeguard tariffs on the imports, which had largely remedied the situation. *See Guangdong Wireking* at 1194, 1206; *see also Nucor* at 1331, 1336 and generally.

<sup>268</sup> *See* Xinboda’s Second Case Brief at 6 (citing *Ad Hoc Shrimp 2013*, at 1376).

<sup>269</sup> *Id.* at 6 (citing *Hoogovens Staal* at 1217, “Presumably, an exporter will be reluctant to continue paying the cost of antidumping duties because the margin will increase ... each time Commerce reviews it”).

<sup>270</sup> *See* Petitioners’ Second Case Brief at 6 (citing *Apex Exps* at 1373).

<sup>271</sup> *See* Memorandum, “Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China: Calculation Memorandum for the Finals Results of Shenzhen Xinboda Industrial Co., Ltd.” (June 7, 2017) (Final Calculation Memorandum).

<sup>272</sup> *See* Petitioners’ Second Case Brief at 1-2 (citing Xinboda’s April 14, 2016 section C Response; *see also* Petitioners’ Letter, “21st Administrative Review of the Antidumping Order Fresh Garlic from the People’s Republic of China - Petitioners’ Submission of GACC Export Data and U.S. Import Statistics to Rebut, Clarify, Or Correct Information Contained in CBP Entry Documents Concerning Xinboda’s Shipments” (December 30, 2016) (Xinboda GACC Data)) at 3.

<sup>273</sup> *See* Petitioners’ Second Case Brief at 3 (citing Xinboda’s March 29, 2016 section A Questionnaire Response (Xinboda’s March 29, 2016 AQR)).

<sup>274</sup> *Id.* at 3.

<sup>275</sup> *Id.*



- The first benchmark, obtained from a confidential source through Datamyne, Inc., is POR-contemporaneous, monthly quantity and value data compiled by GACC for exports of peeled-clove garlic.<sup>276</sup>
- The second, obtained through Infodrive India from a confidential source, includes the same quantity, value, and average unit value (AUV), as the GACC data the petitioners obtained through Datamyne, thus corroborating each other.<sup>277</sup> These benchmarks show that the AUV for Xinboda’s POR shipments is \$2.34 per kilogram.<sup>278</sup>
- The third benchmark consists of POR U.S. import statistics for merchandise classified under HTSUS 0703.20.0020, or fresh peeled-clove garlic, and shows that the AUV for the more than 30 million kilograms of fresh peeled-clove garlic from China during the POR was \$2.32 per kilogram.<sup>279</sup>
- These three benchmarks show that the AUV for Xinboda’s and all Chinese fresh peeled-clove garlic imports is less than half of the publicly-ranged value of \$5.19 per kilogram reported by Xinboda in its section A questionnaire response.<sup>280</sup>
- Xinboda’s failure to provide the Department with accurate prices for its U.S. sales information, which goes to the very core of the Department’s calculation of a dumping margin, does not meet the “best of its ability” standard.<sup>281</sup>
- The Department has relied upon discrepancies in sales information and GACC data in previous segments to assign margins based on total AFA, and should do so with Xinboda in this proceeding.<sup>282</sup>
- The Department should rely on its practice and regulations to assign Xinboda a dumping margin of \$4.71 per kilogram – the highest dumping margin calculated in any segment of this proceeding – in the *Final Results*.<sup>283</sup>

### **Xinboda’s Second Rebuttal Brief**

- After several allegations and several supplemental questionnaire responses, it stands to reason that the Department had adequate time to fully review and investigate the small number of observations in Xinboda’s U.S. sales file.<sup>284</sup> Moreover, Xinboda was required to provide extensive sales traces for all POR sales – all of which corroborated its reported U.S. sales value.<sup>285</sup>
- The petitioners placed unsolicited post-preliminary comments on the record, which should be rejected because the information they are rebutting was available at the time of

<sup>276</sup> *Id.* at 3-4 (citing Xinboda GACC Data at Attachment 1).

<sup>277</sup> *Id.* at 4 (citing Xinboda GACC Data at Attachment 5).

<sup>278</sup> *Id.* at 3-4.

<sup>279</sup> *Id.* at 4.

<sup>280</sup> *Id.*

<sup>281</sup> *Id.* at 6.

<sup>282</sup> *Id.* at 6-7 (citing sections 777(a)(2), 777(b), and 783(d) of the Act; see also *FGPA II* at 1326; see also *Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1382 (Fed. Cir. 2003) (*Nippon Steel*); see also *Fresh Garlic Producers Ass’n v. United States*, 121 F. Supp 3d 1313, 1324 (CIT 2015) (*FGPA II*)).

<sup>283</sup> See Petitioners’ Second Case Brief at 8-9 (citing, e.g. *Viet I-Mei Frozen Foods Co. v. United States*, 83 F. Supp 3d 1345, 1353-54 (CIT 2015) (*Viet I-Mei*); section 777(b)(1)(B) of the Act).

<sup>284</sup> See Xinboda’s Second Rebuttal Brief at 1-2.

<sup>285</sup> See Xinboda’s November 3, 2016 SQR at Ex. SQ2-3)).

filing of Xinboda's sections A and C, and because the petitioners' comments do not explain what they are rebutting, correcting, or clarifying.<sup>286</sup>

- The petitioners' generic allusion to AR 18 and Golden Bird's situation as a basis for adverse facts detracts from their argument in this review because Xinboda's situation – export declaration values matching the U.S. sales file – has not changed from AR 18 to AR 21. The consistency that the Department cited with approval in the 18<sup>th</sup> administrative review continues to be the hallmark of Xinboda's reporting and underlying documentation in the current review. Thus, the 18<sup>th</sup> administrative review's decision is legal support for the reliability of Xinboda's U.S. sales file in the current review and the Department should so find.<sup>287</sup>
- The petitioners' reliance on public statistics that show the POR AUV for imports at \$2.34 per kilogram is problematic because: (1) they do not compare the quality and size of the garlic in question versus that of Xinboda; (2) they do not take into consideration the potential influence of severely dumped fresh garlic from the PRC that was sold presumably at very low prices by the two largest Chinese exporters of subject merchandise.<sup>288</sup>
- Xinboda does not have access to the business proprietary source relied upon by the petitioners but remarks that whatever it appears to suggest is not true.<sup>289</sup> Because Xinboda cooperated to the best of its ability by providing all of the original documents to corroborate the reliability and accuracy of its U.S. sales information, there is no basis for the Department to resort to partial, much less adverse, facts available.<sup>290</sup>

#### **Department's Position:**

The Department has not applied AFA to Xinboda in these *Final Results*. Information on the record of this review corroborates Xinboda's reported U.S. sales values. Specifically, the record contains customs entry documents which include commercial invoices and CBP forms<sup>291</sup> for each of Xinboda's reported sales. The sales and entry values in these documents tie directly to the values reported by Xinboda for all its sales during the POR. Also, in its supplemental questionnaire response, Xinboda provided four customs export declaration forms (CEDFs).<sup>292</sup> We note that CEDFs are issued by the GACC. The volume and values of these documents matches the volume and values reported to us for these sales.

As the petitioners note, the Department has previously relied upon GACC volumes to determine that a respondent had misrepresented the volume of its U.S. sales to the Department, and, in part,

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<sup>286</sup> See Xinboda's Second Rebuttal Brief at 3-4.

<sup>287</sup> *Id.* at 5.

<sup>288</sup> *Id.* at 6.

<sup>289</sup> *Id.* at 7.

<sup>290</sup> *Id.*

<sup>291</sup> See Xinboda's CBP Documents 12/5/16; see also Xinboda's CBP Documents 12/15/16.

<sup>292</sup> See Xinboda's November 3, 2016 SQR

relied on this misrepresentation to apply adverse inference to the exporter.<sup>293</sup> However, in the instant review, the fact pattern differs.

We note that the basis of the petitioners' argument is an alleged discrepancy between an average sales value (based on GACC data) and the average sales value (based on Xinboda's U.S. sales database). As the petitioners argue, the Department has relied upon GACC data, in part, to determine a respondent has reported an incorrect volume of sales. We note that in the eighteenth administrative review, the Department compared the total volume of the GACC data for the POR to the total volume reported by the respondent for the POR, to discern the disparity.<sup>294</sup> In the instant review, the GACC data are monthly aggregated sales values and volumes, while the U.S. values for Xinboda on the record are transaction-specific. To directly compare the two data sets, the Department would require further information regarding the GACC's calculation of AUV, specifically which dates fall within the "monthly" window (*e.g.* date of sale, invoice date, export date, inspection date). Without a direct comparison of the sales values, the Department cannot reasonably conclude that Xinboda misreported its U.S. sales value. Further, we cannot ignore the remaining record evidence that supports Xinboda's reported U.S. sales value (*i.e.* CEDFs, sales traces, CBP documents).

Accordingly, the Department cannot conclude that Xinboda did not cooperate to the "best of its ability,"<sup>295</sup> to apply partial or total AFA.<sup>296</sup> Consequently, there is insufficient evidence to apply an adverse rate to ensure "that {Xinboda} does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."<sup>297</sup>

We also note that the Department considers the petitioners' December 30, 2016, submission timely pursuant to our December 23, 2016, memorandum establishing December 30, 2016, as the deadline to submit responses to Xinboda's CBP documents.<sup>298</sup> The petitioners' January 4, 2017, submission did not contain new factual information, was not unsolicited, and is not considered untimely.<sup>299</sup>

#### **Comment 8: Whether the Department Correctly Selected Romania as the Surrogate Country and Whether Mexico has the Highest Quality of Data Available**

When the Department is investigating imports from a NME country, section 773(c)(1) of the Act directs us to base normal value (NV), in most circumstances, on the NME producer's factors of production (FOPs), valued in a surrogate market economy (ME) country, or countries,

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<sup>293</sup> See Petitioners' Second Case Brief at 7 (citing *FGPA II* at 1326; see also *Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the 18<sup>th</sup> Antidumping Duty Administrative Review; 2011-2012*, 79 FR 36721 (June 30, 2014) (Garlic 18), IDM).

<sup>294</sup> See Garlic 18 IDM at Comment 16.

<sup>295</sup> See *Nippon Steel* at 1382.

<sup>296</sup> See *FGPA II* at 1324.

<sup>297</sup> See *Viet I-Mei* at 1353-54.

<sup>298</sup> See Memorandum, "Fresh Garlic from the People's Republic of China – 21<sup>st</sup> Administrative Review (2014-2015): Extension of Deadline to Rebut, Clarify, or Correct CBP Data" (December 23, 2016); see also Xinboda GACC Data.

<sup>299</sup> See 19 CFR 351.301.

considered appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing FOPs, the Department shall utilize, to the extent possible, the prices or costs of the FOPs in one or more ME countries that (A) are at a level of economic development comparable to that of the NME country and (B) are significant producers of comparable merchandise. Moreover, it is the Department's practice to select an appropriate surrogate country (SC) based on the availability and reliability of data on the record.<sup>300</sup>

For the *Preliminary Results*, we selected Romania as the SC from an Office of Policy list (OP List) that included Romania, South Africa, Mexico, Bulgaria, Ecuador, and Thailand.<sup>301</sup> We found that Romania was at a comparable level of economic development, and a significant producer of comparable merchandise.<sup>302</sup> We also found that there were publicly available Romanian data for all FOPs on the record of this review.<sup>303</sup> Furthermore, we determined that Romanian data were superior to Mexican data in a number of respects, and therefore, constituted the best available information.<sup>304</sup>

As discussed below, we continue to find that Romania is the most appropriate SC because it is at a comparable level of economic development as the PRC, it is a significant producer of comparable merchandise, and its data quality is the best available on the record.

*A. Which Countries are Economically Comparable to the PRC*

In our April 27, 2016, memorandum,<sup>305</sup> the Department determined that both Romania and Mexico were considered economically comparable to the PRC, pursuant to section 773(c)(4)(A) of the Act. Following the Department's selection of Romania as the primary SC, no parties commented on the economic comparability of Romania or Mexico in their briefs. Moreover, there is no information on the record that warrants reconsideration of this finding. As such, the Department continues to find that both Romania and Mexico are at a level of economic development comparable to that of the PRC.

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<sup>300</sup> See Department Letter, "2014-2015 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," (May 9, 2016). 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 27, 2016) (OP Memorandum). The Department determined that Mexico, Romania, South Africa, Bulgaria, Ecuador, and Thailand are countries whose per capita gross national incomes (GNI) are comparable to the PRC in terms of economic development.

<sup>301</sup> See PDM at 17-18.

<sup>302</sup> *Id.* at 24.

<sup>303</sup> *Id.* at 29.

<sup>304</sup> *Id.* at 28.

<sup>305</sup> See Memorandum, "Request for a List of Surrogate Countries for an Administrative Review of Antidumping Duty on Fresh Garlic from the People's Republic of China ("China")" (April 27, 2016).

## B. Which Countries are Significant Producers of Comparable Merchandise

### Xinboda's First Case Brief

- The Department's preliminary finding that fresh garlic grown in Romania is physically comparable to that grown in the PRC – relying on past administrative and new shipper reviews and the petitioners' submissions – is based on questionable information about the size of Romanian garlic.<sup>306</sup>
- The Department's decision relies on a single 2001 article which lists the characteristics of varieties of garlic in Romania and a single 2012 Alibaba garlic advertisement which the petitioners use to draw a relationship between weight and size of garlic and to calculate a weight ratio.<sup>307</sup>
- The record evidence demonstrates that the majority of the garlic grown in Romania is not large bulb garlic.<sup>308</sup>
- The Department has before contemplated whether a country is a net exporter of comparable merchandise when determining whether a country constitutes a significant producer.<sup>309</sup> Romania is not a net exporter of garlic; Mexico is a significant exporter and net exporter of garlic.<sup>310</sup>
- The record contains substantially more information regarding the comparability of Mexican garlic bulb size to Chinese garlic bulb size, than it does for Romanian garlic.<sup>311</sup>
- Most imported fresh garlic from the PRC ranges in size from 1.5 to 2.5 inches, 38.1mm to 63.5mm, or 3.81cm to 6.35cm.<sup>312</sup> Numerous articles on the record report that the majority of the garlic varieties grown in Mexico are comparable to the size range of Chinese garlic.<sup>313</sup>
- Mexico is the largest supplier of garlic to the United States after China, and Mexican garlic is critical in the U.S. market; even as the PRC's cheaper, dumped garlic gained on Mexico's share of the garlic market, the U.S. relied on Mexico to supply the United States when the Chinese and domestic crops were out of season.<sup>314</sup>

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<sup>306</sup> See Xinboda's First Case Brief at 5-6 (citing *Fresh Garlic from the People's Republic of China; Preliminary Results, Preliminary Intent to Rescind, and Partial Rescission of the 21<sup>st</sup> Antidumping Duty Administrative Review, 2014-2015*, 81 FR 89050 (December 9, 2016) (PDM) at 25).

<sup>307</sup> *Id.* at 6-7.

<sup>308</sup> *Id.* at 8.

<sup>309</sup> *Id.* at 10 (citing Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process, (March 1, 2004) ("Policy Bulletin 04.1") available at <http://enforcement.trade.gov>); *Fresh Garlic Producers Ass'n v. United States*, 180 F Supp 3d 1233 (CIT 2016) (*FGPA III*); see also *Shandong Rongxin Imp. & Exp. Co. v. United States*, 774 F Supp 2d 1307 (CIT 2011) (*Shandong Rongxin*) at 1316; see also *Dupont Teijin Films v. United States*, 997 F. Supp 2d 1338 (CIT 2014) (*Dupont Teijin*) at 1345).

<sup>310</sup> *Id.* at 11 (citing Xinboda's August 19, 2016 Surrogate Value Submission (SVS) (Xinboda's SVS) at SVE 3).

<sup>311</sup> *Id.* at 15-16 (citing PDM at 28).

<sup>312</sup> *Id.* at 6, 16 (citing PDM at 25).

<sup>313</sup> See Xinboda's First Case Brief at 17-23 (citing Xinboda's SVS at Ex. SV-6 and SV-13).

<sup>314</sup> *Id.* at 17-26 (citing *Fresh Garlic from China*, Inv. No. 731-TA-683, USITC Pub. 4316 (April 2012) (third sunset review) at I-11; see also *Fresh Garlic from China*, Inv. No. 731-TA-683, USITC Pub. 2825 (November 1994) (investigation final) at Table 20; I-24; II-73); see also *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*

- Mexico is the best available source for surrogate values on the record because: it is a top and net exporter of garlic; it primarily grows a large bulb that is comparable to the size of the bulbs grown in the PRC; Mexican garlic bulb prices are farmgate and exclusive of additional costs, taxes, and duties, and represent a broad-market average.<sup>315</sup>
- The petitioners suggest that Mexican garlic is dissimilar to Chinese garlic because of the climate in Mexico.<sup>316</sup> The petitioners' argument relied on a comparison between the top four or five climate zones in garlic growing regions of the PRC and the top five climate zones in the entire country of Mexico.<sup>317</sup> Major garlic growing areas of Mexico have cold semi-arid climates, similar to the Chinese garlic growing regions.<sup>318</sup>

### **Petitioners' First Rebuttal Brief**

- The Department's decision in the previous review and the *Preliminary Results*, that Romanian and Chinese garlic bulbs are physically comparable, is based on ample record information.<sup>319</sup>
- As demonstrated by UN FAO data, Romania is a significant producer of subject merchandise.<sup>320</sup> The Department's reliance on UN FAO is not unreasonable.<sup>321</sup>
- The Department should continue to select Romania as the primary SC because Mexican garlic bulb data are dissimilar to the garlic used by the Chinese respondents.<sup>322</sup>

### **Xinboda's First Rebuttal Brief**

- The information concerning the size of the garlic bulb and the quantity of production of any potential large bulb garlic in Romania is highly questionable.<sup>323</sup>

### **Department's Position:**

For these *Final Results*, we have continued to rely on the 2013 UN FAO production data to determine that Romania and Mexico are significant producers of comparable merchandise.<sup>324</sup>

Although fresh garlic from both Romania and Mexico is identical merchandise and, therefore, comparable, we continue to find that the record supports a finding that Romanian garlic bulbs are more comparable because they are similar in size to the input garlic bulbs consumed in the

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*Cangshan Qingshui Vegetable Foods Co., Ltd.*; 2012-2013, 79 FR 62103 (October 16, 2014) (Jinxiang and Cangshan NSR), IDM at 8).

<sup>315</sup> *Id.* at 29.

<sup>316</sup> *Id.* (citing PDM at 28).

<sup>317</sup> *Id.* at 28-29.

<sup>318</sup> *Id.* at 29.

<sup>319</sup> See Petitioners' First Rebuttal Brief at 13-14 (citing Garlic AR20 IDM at 10; Issues and Decision Memorandum for the Final Results of Antidumping Duty Semiannual New Shipper Review on Fresh Garlic from the People's Republic of China: Jinxiang Merry Vegetable Co., Ltd. (Merry) and Cangshan Qingshui Vegetable Foods Co., Ltd. (Qingshui), at 5-8.

<sup>320</sup> *Id.* at 16 (citing section 773(c)(4)(B) and *Shandong Rongxin* at 1316).

<sup>321</sup> *Id.* at 17.

<sup>322</sup> *Id.* at 20-23.

<sup>323</sup> See Xinboda's First Rebuttal Brief at 2.

<sup>324</sup> See PDM at 23-24.

production of subject merchandise. Moreover, garlic in Romania is stored and sold throughout the year. Conversely, information on the record indicates that fresh garlic grown in Mexico is smaller, and generally harvested as whole plants that have been uprooted from the field, many of which are sold as “wet bulbs” in large open sacks, and are not differentiated by size.<sup>325</sup> Garlic harvested in this manner would require significant processing to produce fresh garlic products.<sup>326</sup> In contrast, Chinese input bulbs undergo significant processing by the intermediate processors, and require only minimal further processing to produce fresh garlic products.<sup>327</sup> Additionally, as explained in the Preliminary Decision Memorandum, record evidence demonstrates that Mexico sells the vast majority of its garlic during a 4-6-month time range.<sup>328</sup> For these reasons, we continue to find that the fresh garlic produced in Romania is more physically similar than the garlic produced in Mexico, to the subject merchandise, garlic produced in China.

Regarding the petitioners’ and Xinboda’s argument on the climate regions of Mexico, we note that there is insufficient evidence to determine whether the Mexican climate is similar or dissimilar from that of the PRC’s garlic growing regions.

Xinboda’s argument that Mexico is the largest supplier of fresh garlic to the United States after China is irrelevant. The Department does not compare potential surrogate country data to the PRC’s production level of fresh garlic, which is by far the largest in the world – approximately 80 percent of world production, and over 15 times larger than the next largest producing country. Given this disparity, it is not useful to make a judgment “consistent with the characteristics of world production of, and trade in, comparable merchandise,” as suggested in Policy Bulletin 04.1. Rather, based on the unique circumstances of this case,<sup>329</sup> the Department has evaluated the garlic production data from Romania and Mexico to determine whether the production was sufficiently large in volume, such that price data from either country could provide reliable SVs reflecting the commercial market reality of producing the subject merchandise in that country. This interpretation follows logically from the underlying purpose of section 773(c)(4) of the Act which directs the Department to identify reliable market-based prices upon which to value a NME producer’s factors of production.

Here, Romania’s and Mexico’s 2013 production amounts are each noticeably and measurably large – 62,156 and 59,015 metric tons,<sup>330</sup> respectively, such that it is reasonable to assume the quantity reflects an adequate number of garlic producers that are commercially viable, and therefore provide data reflecting market-based transactions. Xinboda has not offered any meaningful distinction between the significance of Romanian and Mexican 2013 production levels.

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<sup>325</sup> See Petitioners’ First Rebuttal Brief at 21.

<sup>326</sup> *Id.* at 21.

<sup>327</sup> *Id.* at 21 (citing Petitioners’ May 12, 2016 NFI Submission at Ex. 1).

<sup>328</sup> *Id.* at 20 (citing Petitioners’ August 19, 2016 Surrogate Value Submission (Petitioners’ SVS) at Attachment 3 at 11-12).

<sup>329</sup> Policy Bulletin 04.1 acknowledges the need for flexibility and the use of discretion because the “meaning of ‘significant producer’ can differ significantly from case to case.”

<sup>330</sup> See Xinboda’s July 22, 2016 Surrogate Country Submission (SCS) (Xinboda’s SCS) at Exhibit 2.

Xinboda's reliance on *Shandong Rongxin* is misplaced. In that case, the CIT took issue with the Department's finding that countries with miniscule export levels (*i.e.*, \$43, \$67, \$159, and \$218) were significant producers.<sup>331</sup> In this review, both countries under consideration produce measurably large quantities of fresh garlic to be considered significant producers. Xinboda's use of *Dupont Teijin* is similarly misplaced. In that case, world production data were not available, so the Department relied upon export data to determine whether a country was a significant producer. In this case, world production data are available, and the Department has determined that both Mexico and Romania are significant producers of fresh garlic. Xinboda argues that Romania is not a net exporter of garlic<sup>332</sup>, however, the Department notes that Policy Bulletin 04.1 does not state that a surrogate country must be a net exporter, merely that net exporters would be considered significant producers.

### C. Which Country Presents the Best SV Data

#### Petitioners' First Case Brief

- In the PDM, the Department stated that the Mexican price for input garlic bulbs is monthly and contemporaneous with the POR.<sup>333</sup> However, the price referenced is an annual price; the Department should correct this statement in the Final Results.<sup>334</sup>

#### Xinboda's First Case Brief

- The wholesale nature of the Romanian garlic price makes them (1) non-comparable to Xinboda's garlic bulb prices, (2) unreliable as a surrogate source, and not the best available information on the record for the valuation of Xinboda's raw garlic bulb input.<sup>335</sup>
- The Romanian garlic bulb data are not farmgate, and tax and duty exclusive according to the UN FAO and the Romanian government's National Institute of Statistics (the INSSE).<sup>336</sup>
- The INSSE confirms that the INSSE's farmgate garlic bulb price (103A) is the same as the wholesale garlic bulb price (101A) and likely includes "transportation costs, storage costs, processing or packaging costs, and a profit mark-up."<sup>337</sup>
- The short supply of garlic in Romania has led to pervasive smuggling issues demonstrated by the stagnant garlic production and dramatic decrease in garlic imports.<sup>338</sup>

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<sup>331</sup> See *Shandong Rongxin*, 774 F. Supp. 2d 1307, 1316 (CIT 2011).

<sup>332</sup> See Xinboda's First Case Brief at 7.

<sup>333</sup> See Petitioners' First Case Brief (citing PDM at 28).

<sup>334</sup> *Id.* (citing Xinboda's Letter "Fresh Garlic from the People's Republic of China: Preliminary Surrogate Value Submission" (August 9, 2016) (Xinboda's SVS) at exhibit SV-3).

<sup>335</sup> See Xinboda's First Case Brief at 2, 4-5 (citing *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) (Jinxiang and Cangshan NSR), IDM at 8 (citing *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 36168 (June 17, 2013), IDM at 13-16; see also *Fresh Garlic Producers Ass'n v. United States*, 83 F Supp. 3d 1330 (CIT 2015) (*FGPA I*); see also section 773(c)(1) of the Act).

<sup>336</sup> *Id.* at 2-3.

<sup>337</sup> See Xinboda's First Case Brief at 3-4.

<sup>338</sup> *Id.* at 15.



- The European Union (EU) has a 9.6 percent ad valorem duty on imported foreign garlic, followed by an additional duty of 1,200 euros per ton – or essentially at least a 100 percent tariff – after the quota has been met.<sup>339</sup> The EU’s protectionist tariff quota is the only reasonable explanation for the sustained price increase following Romania’s accession to the EU.<sup>340</sup> Romanian prices do not represent prices in China as if China were driven by normal market sources, which is the point of the NME normal value methodology.<sup>341</sup>
- Following the Department’s practice, because the Mexican government’s Agricultural Food and Fishing Information Service (SIAP)’s data is the source for the UN FAO data, the Department must reasonably presume that the data are (1) farmgate specific; (2) based on the broadest market average; (3) contemporaneous; (4) exclusive of taxes and duties; and (5) publicly available.<sup>342</sup>
- In addition, the Mexican data are complete and reliable for all other factors of production. The record contains financial statements from five producers of comparable merchandise. It is the Department’s preference when choosing between multiple financial statements and a single financial statement of similar quality, to use multiple financial statements because they are more likely to be representative of the industry.<sup>343</sup>
- The Mexico record is superior to Romania because the market is not tainted by protectionist tariffs.<sup>344</sup>

### **Petitioners’ First Rebuttal Brief**

- The Department considers the totality of the record information in selecting the best available source for input garlic bulb data. The record demonstrates that the bulbs consumed by Chinese respondents are similar to Romanian garlic bulb data, because of their size and because they have both undergone significant post-harvest processing.<sup>345</sup> Both garlic bulb data are not farmgate prices.<sup>346</sup>
- Because Xinboda has failed to demonstrate a causal link between EU-imposed tariffs and quotas, and Chinese-“smuggled” garlic on the garlic prices in the Romanian market, the Department should continue to rely on Romanian garlic bulb data.<sup>347</sup>
- The Department should continue to select Romania as the primary surrogate country because the pricing data include inconsistencies; and because the Mexican data are not the best available information on the record.<sup>348</sup>

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<sup>339</sup> *Id.* at 12, 14.

<sup>340</sup> *Id.* at 13-14.

<sup>341</sup> *Id.* at 14-15.

<sup>342</sup> *Id.* at 26-27 (citing PDM at 28, Jinxiang and Cangshan NSR, IDM at 8).

<sup>343</sup> *Id.* at 31 (citing *Certain Steel Threaded Rod from the People’s Republic of China; Final Results of Third Antidumping Duty Administrative Review; 2011-2012*, 78 FR 66330 (November 5, 2013) (*Steel Threaded Rod*), IDM at 16, comment 1 and *Steel Wire Garment Hangers from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 2010-2011*, 78 FR 28803 (May 16, 2013) (*Wire Garment Hangers*), IDM at comment 1D).

<sup>344</sup> *Id.* at 32.

<sup>345</sup> See Petitioners’ First Rebuttal Brief at 11-12.

<sup>346</sup> *Id.* at 11-13.

<sup>347</sup> See Petitioners’ First Rebuttal Brief at 18-19.

<sup>348</sup> *Id.* at 20-23.

### **Xinboda's First Rebuttal Brief**

- Contrary to the petitioners' comment, the Mexican garlic bulb annual data are contemporaneous.<sup>349</sup> The POR is November 2014 through October 2015; thus, the 2015 annual Mexican garlic prices would only miss two months of the POR, a problem solvable by proportionally averaging the 2014 and 2015 Mexican garlic prices to accommodate the annual data.<sup>350</sup> Additionally, like most countries, Mexico sells the vast majority of its garlic during a 4-6 month time range: Mexico has very little exports from November through February.<sup>351</sup>
- The Department prefers to rely on contemporaneous UN FAO garlic prices, rather than other contemporaneous sources, because the UN FAO data better fulfill the Department's other requirements for level of trade, tax-exclusivity, and broad-market average.<sup>352</sup>

### **Department's Position:**

We continue to rely on the SV information from Romania for the final results. As an initial matter, the Department continues to determine that the wholesale Romanian garlic bulb data are representative of those purchased by Xinboda's processor, Excelink. In its briefs, Xinboda argues that the wholesale price of Romania's garlic bulb pricing data makes them unsuitable for SV use.<sup>353</sup> Specifically, Xinboda notes that the "farmgate" price reported to the UN FAO by the INSSE is actually the wholesale price.<sup>354</sup> Moreover, the UN FAO country notes indicate that for several vegetables, including garlic, the prices are actually "wholesale," not farmgate.<sup>355</sup> Indeed, the Department previously determined that the Romanian garlic bulb data prices were not farmgate, as the garlic was sold throughout the year. Specifically, the Department has found "{g}iven that Romanian garlic is also semi-perishable, any raw garlic sold in Romania from October through early July would also require either cold storage or controlled CA storage facilities in order to remain viable."<sup>356</sup>

We note that the record of this review shows that Excelink purchases its garlic on a "wholesale" basis, and that the price paid by Excelink includes further processing (*e.g.* cold storage or controlled atmosphere (CA) facilities in order to remain viable for processing outside of the

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<sup>349</sup> See Xinboda's First Rebuttal Brief at 1.

<sup>350</sup> *Id.* at 1-2.

<sup>351</sup> *Id.* at 1.

<sup>352</sup> *Id.* at 2 (citing *Fresh Garlic Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 36168 (June 17, 2013) (Garlic 17 Final), IDM at comment 6 (relying on UN FAO data from almost 2-year period prior to the POR and adjusting for inflation)). Xinboda also cites to the Draft Remand Results pertaining to *Fresh Garlic Producers Association v. United States*, U.S. Court of International Trade, Consol. Ct. No. 14-00180, Slip-Op. 16-68, however, because the information is not on the record, the Department is not considering it for these final results.

<sup>353</sup> See Xinboda's First Case Brief at 2-5.

<sup>354</sup> *Id.* at 3-4.

<sup>355</sup> *Id.* at 3 (citing Xinboda's August 19, 2016 Rebuttal Surrogate Value Submission (RSVS) (Xinboda's RSVS) at Exhibit SV2-3).

<sup>356</sup> See *Garlic 20 Final*, IDM at 28-29.

summer harvest months).<sup>357</sup> This finding with respect to Excelink is consistent with the prior review of this order.<sup>358</sup> Accordingly, we continue to find that the wholesale price of Romanian garlic is a reliable SV for Excelink's purchases of garlic bulbs.

Thus, Xinboda's reliance on the Department's use of farmgate prices in the new shipper reviews for Jinxiang Merry Vegetable Co., Ltd. (Jinxiang) and Cangshan Qingshui Vegetable Foods Co., Ltd (Cangshan) in support of using Mexican garlic farmgate prices for Excelink's SV in this review is misplaced.<sup>359</sup> There is no information on the record of this review with respect to Jinxiang's or Cangshan's respective garlic purchasing and production practices (*e.g.*, what month they purchased/processed garlic in China).<sup>360</sup> Excelink purchased and processed garlic that had been further processed, cold stored and or CA-stored throughout the POR.<sup>361</sup> However, information on this record indicates Mexico sells the vast majority of its garlic during a 4-6-month time range each year.<sup>362</sup> As such, Mexican farmgate garlic prices are less reflective of the price paid by Excelink for Chinese garlic than the Romanian garlic data, which also includes further processing, cold storage and or CA storage.

We agree with Xinboda's argument that the Mexican garlic bulb data are reliable because they are the source for the UN FAO data.<sup>363</sup> The Department has relied on the UN FAO data in the past, and continues to find that the UN FAO data are reliable because they are (1) specific; (2) based on a broad market average; (3) contemporaneous; (4) exclusive of taxes and duties; and (5) publicly available.<sup>364</sup> We note however, that the Romanian garlic data is reported by the INSSE to the UN FAO, so it is also (1) specific; (2) based on a broad market average; (3) contemporaneous; (4) exclusive of taxes and duties; and (5) publicly available.<sup>365</sup>

In the preceding review and the *Preliminary Results*, the Department addressed Xinboda's arguments regarding the EU's tariff quota on imported garlic, as well as allegations regarding smuggled garlic into Romania.<sup>366</sup> In the preceding review, the Department noted that Xinboda provided speculation regarding garlic pricing and import trends since Romania's accession to the EU, but had "not provided any information demonstrating a relationship between the presence of tariffs and any change in Romanian prices, or quantifying such a relationship... Xinboda has not demonstrated any causal link or distortion, as opposed to a temporal correlation between prices

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<sup>357</sup> See Xinboda's August 26, 2016 Supplemental Questionnaire Response (Xinboda's August 26, 2016 SQR) at 4.

<sup>358</sup> See Garlic 20 Final, IDM at 28-29.

<sup>359</sup> See Xinboda's First Case Brief at 27.

<sup>360</sup> See Jinxiang and Cangshan NSR at 8 (citing *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 36168 (June 17, 2013), IDM at 13-16; see also *Fresh Garlic Producers Ass'n v. United States*, 83 F Supp. 3d 1330 (CIT 2015) (*FGPA I*)).

<sup>361</sup> See Xinboda's August 26, 2016 SQR at 4 and 6.

<sup>362</sup> See Petitioners' SVS at Attachment 3 at 11-12.

<sup>363</sup> See Xinboda's First Case Brief at 26-27 (citing PDM at 28; see also Jinxiang and Cangshan NSR, IDM at 8; see also Garlic 17 Final).

<sup>364</sup> See PDM at 28.

<sup>365</sup> *Id.*

<sup>366</sup> See Garlic 20 IDM at 11-14; see also PDM at 27.

and the imposition of tariffs.”<sup>367</sup> In the instant review, Xinboda provides little additional information to support its claim regarding the EU tariff quota and the resulting smuggling that it alleges.<sup>368</sup> Xinboda continues to ask the Department to make a logical leap to conclude that because no evidence exists to the contrary, the Department should find that there is a causal link between the EU tariff quota and the garlic pricing data.<sup>369</sup> Accordingly, the Department continues to find that there is insufficient evidence to demonstrate a causal relationship between the EU tariff quota, and garlic smuggling, which has been alleged by Xinboda.<sup>370</sup>

Xinboda has also argued that the Department has previously determined non-contemporaneous UN FAO data to be more reliable than other types of contemporaneous data. However, in the instant review, both the Romanian data and the Mexican data sets serve as the source for the UN FAO data for their respective countries.<sup>371</sup> Moreover, in the *Preliminary Results*, the Department stated that the Mexican garlic bulb data are monthly and contemporaneous to the POR,<sup>372</sup> while, in fact, the Mexican garlic bulb data are annual and not contemporaneous to the POR.<sup>373</sup> We have not implemented Xinboda’s suggestion that the Mexican garlic bulb data can be made “contemporaneous” to the POR by averaging the annual Mexican garlic bulb data for 2014 and 2015,<sup>374</sup> because the contemporaneous Romanian garlic data on the record is, without adulteration, 1) specific; (2) based on a broad market average; (3) contemporaneous; (4) exclusive of taxes and duties; and (5) publicly available.<sup>375</sup>

Finally, the Department continues to find that the two financial statements for Romanian producers of comparable merchandise are the best information available, pursuant to 19 CFR 351.408(c)(4). As explained in the Preliminary Surrogate Values Memorandum, in accordance with 19 CFR 351.408(c)(2), the Department normally values all factors from a single SC, and will resort to a secondary SC only if data from the primary surrogate country are unavailable or unreliable.<sup>376</sup> Consistent with this practice, in valuing FOPs from an NME country, the Department’s preference is to use financial data gathered from the primary SC, provided the data

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<sup>367</sup> See Garlic 20 IDM at 14.

<sup>368</sup> Xinboda provided an additional article and amendments to the EU import tariff quota regulation. See Xinboda’s Letter “Fresh Garlic from the People’s Republic of China: Rebuttal Surrogate Country Comments” (August 5, 2016).

<sup>369</sup> See Xinboda’s First Case Brief at 15.

<sup>370</sup> *Id.*

<sup>371</sup> See Xinboda’s First Rebuttal Brief at 2 citing *Fresh Garlic Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 36168 (June 17, 2013) (Garlic 17 Final), IDM at cmmt 6 (relying on UN FAO data from almost 2-year period prior to the POR and adjusting for inflation).

<sup>372</sup> See PDM at 28.

<sup>373</sup> See Petitioners’ First Case Brief (citing PDM at 28; see also Xinboda’s SVS at exhibit SV-3).

<sup>374</sup> See Xinboda’s First Rebuttal Brief at 1-2 (citing Xinboda’s First Case Brief at 3 (citing Xinboda’s RSVS)).

<sup>375</sup> See PDM at 28.

<sup>376</sup> See Memorandum, “Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China: Preliminary Surrogate Values Memorandum” (December 5, 2016) (Prelim SV Memo) (citing *Folding Metal Tables and Chairs from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, and Revocation of the Order, in Part*, 76 FR 66036 (October 25, 2011), IDM at 10).

are accurate, complete, contemporaneous, and representative and are not distorted or otherwise unreliable.<sup>377</sup> There is no information on the record which causes us to reconsider our finding that the experience of SC Legume Fructe Buzau S.A., a vegetable processor and reseller, and the 2014-2015 statements from SC Boromir PROD S.A., a flour producer, are the best information on the record.<sup>378</sup>

Thus, Xinboda's argument that the Department should utilize the five financial statements from Mexican companies because of the Department's preference to use multiple financial statements is misplaced.<sup>379</sup> Xinboda points to *Steel Threaded Rod* and *Wire Garment Hangers* in support of its argument, but the fact pattern in those cases is distinguishable from the instant review.<sup>380</sup> In *Wire Garment Hangers*, the Department relied on three statements from the primary SC, the Philippines, after determining that four financial statements were not as reliable as those three because the other four companies did not produce comparable merchandise.<sup>381</sup> Similarly, in the instant review, the Department relied on food processors from the primary SC that produce comparable subject merchandise, pursuant to 19 CFR 351.408(c)(4).<sup>382</sup> In *Steel Threaded Rod*, the Department relied on financial statements of a company that produced identical merchandise.<sup>383</sup> In the instant review, none of the financial statements originate from companies that produce fresh garlic.

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<sup>377</sup> See Prelim SV Memo at 15.

<sup>378</sup> *Id.* (In previous administrative and new shipper reviews, the Department has found that tea, rice, and vegetable processing are similar to garlic because each is highly processed or preserved prior to sale. See, e.g., *Fresh Garlic from the People's Republic of China: Preliminary Results of, Partial Rescission of, and Intent to Rescind, in Part, the 15<sup>th</sup> Antidumping Duty Administrative Review*, 75 FR 80458 and (December 22, 2010) and accompanying "Preliminary Results of 2008-2009 Administrative Review of Fresh Garlic from the People's Republic of China: Surrogate Values," dated December 7, 2010; *Fresh Garlic from the People's Republic of China: Final Results and Final Rescission, in Part, of the 2008-2009 Antidumping Duty Administrative Review*, 76 FR 37321, (June 27, 2011)).

<sup>379</sup> See Xinboda's First Case Brief at 31

<sup>380</sup> *Id.* (citing *Steel Threaded Rod*, IDM at 16, Comment 1 and *Wire Garment Hangers*, IDM at Comment 1D)

<sup>381</sup> See *Wire Garment Hangers*, IDM at 14-15.

<sup>382</sup> The Romanian financial statements originated from companies that produced vegetables and flour, while the Mexican financial statements originated from companies that produced corn flour, tortillas, baked goods, and dairy. See Prelim SV Memo at 15.

<sup>383</sup> See *Steel Threaded Rod*.

**RECOMMENDATION**

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

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

6/7/2017

**X** *Ronald K. Lorentzen*

Signed by: RONALD LORENTZEN

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Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance