



A-570-831
Administrative Review
11/01/2015 – 10/31/2016
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November 28, 2017

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Senior Director
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results, Preliminary
Rescission, and Final Rescission, In Part, of the 2015-2016
Antidumping Duty Administrative Review and Preliminary Results
of the New Shipper Reviews: Fresh Garlic from the People's
Republic of China

I. SUMMARY

In response to requests from interested parties, the Department of Commerce (the Department) is conducting an administrative review (AR) and two new shipper reviews of the antidumping duty (AD) order on fresh garlic (garlic) from the People's Republic of China (PRC)¹ covering the period of review (POR) of November 1, 2015, through October 31, 2016. The mandatory respondents in the above referenced administrative review are Zhengzhou Harmoni Spice Co., Ltd. (Harmoni) and Shandong Jinxiang Zhengyang Import & Export Co., Ltd. (Zhengyang). The new shipper reviews cover Qingdao Joinseafoods Co., Ltd. (Qingdao Join) and Join Food Ingredient Inc. (Join Food) (collectively, Join) and Zhengzhou Yudi Shengjin Agricultural Trade Co., Ltd. (Yudi).

The Department preliminarily finds that Zhengyang sold subject merchandise to the United States at less than normal value. Furthermore, we preliminarily find that the review request made by the Coalition for Fair Trade in Garlic (the CFTG) was not valid, and accordingly have preliminarily rescinded the review request with respect to seven companies, including Harmoni.²

¹ See *Antidumping Duty Order: Fresh Garlic from the People's Republic of China*, 59 FR 59209 (November 16, 1994).

² The CFTG requested that the Department review 17 companies. No other review request was submitted for 7 of these companies.

We are also preliminarily granting a separate rate to six companies which demonstrated their eligibility for separate rate status, but were not selected for individual examination. The rates assigned to each of these companies can be found in the “Preliminary Results of Review” section of the accompanying preliminary results *Federal Register* notice. The Department also preliminarily determines that five companies made no shipments during the POR.

The Department also preliminarily finds that Join and Yudi made sales on a *bona fide* basis and is calculating dumping margins for each new shipper respondent.

If these preliminary results are adopted in our final results of administrative review and new shipper reviews, the Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. We intend to issue final results of these reviews no later than 120 days from the date of publication of this notice pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.221.

II. BACKGROUND

Administrative Review

On November 4, 2016, the Department published a notice of opportunity to request an administrative review of the AD order on garlic from the PRC.³ Between November 7, 2016, and November 30, 2016, interested parties submitted requests for review. On January 13, 2017, the Department initiated the twenty-second administrative review of fresh garlic from the PRC with respect to 35 companies.⁴

Fourteen parties timely submitted “no shipment” certifications, attesting that they had no entries of subject merchandise during the POR. Specifically, these companies are: (1) Jinan Farmlady Trading Co., Ltd.; (2) Qingdao Xintianfeng Foods Co., Ltd. (QXF); (3) Jining Yifa Garlic Produce Co., Ltd.; (4) Shijiazhuang Goodman Trading Co., Ltd.; (5) Jining Shengtai Fruits & Vegetables Co., Ltd.; (6) Jinxiang Richfar Fruits & Vegetables Co., Ltd.;⁵ (7) Qingdao Lianghe International Trade Co., Ltd. (Lianghe);⁶ (8) Jining Alpha Food Co., Ltd.;⁷ (9) Shenzhen Yuting

³ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 81 FR 76920 (November 4, 2016).

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 4294 (January 13, 2017). (*Initiation Notice*)

⁵ See Farmlady, *et al.* Letter, “Fresh Garlic from the People’s Republic of China – No Sales Statements in Connection with the Garlic 22 (2015-2016) Administrative Review) dated February 23, 2017.

⁶ See Qingdao Lianghe International Trade Co., Ltd. Letter, “Fresh Garlic from the People’s Republic of China – No Sales Certification” dated February 7, 2017.

⁷ See Jining Alpha Food Co., Ltd. Letter, “Fresh Garlic from the People’s Republic of China – No Sales Certification” dated February 8, 2017.

Foodstuff Co., Ltd.;⁸ (10) Jinxiang Merry Vegetable Co., Ltd.;⁹ (11) Shandong Chenhe International Trading Co., Ltd.;¹⁰ (12) Lanling Qingshui Vegetable Foods Co., Ltd.;¹¹ (13) Jinxiang Huameng Imp & Exp, Co., Ltd.;¹² (14) Jinxiang Hejia Co., Ltd.¹³

Nine companies each timely submitted a separate rate status certification or application. Those companies include: (1) Shenzhen Bainong Co., Ltd. (Bainong);¹⁴ (2) Jinxiang Feiteng Import & Export Co., Ltd (Feiteng);¹⁵ (3) Harmoni;¹⁶ (4) Qingdao Tiantaixing Foods Co., Ltd. (QTF);¹⁷ (5) Qingdao Sea-line Trading Co., Ltd. (Sea-line);¹⁸ (6) Jining Shunchang Import & Export Co., Ltd. (Shunchang);¹⁹ (7) Weifang Hongqiao International Logistics Co., Ltd. (Weifang);²⁰ (8) Shenzhen Xinboda Industrial Co. Ltd. (Xinboda);²¹ (9) Zhengyang.²²

On March 7, 2017, the Department issued a memorandum indicating that we would examine the two largest exporters of subject merchandise by volume, Harmoni and Zhengyang.²³ On March 8, 2017, the Department issued questionnaires to Harmoni and Zhengyang.²⁴ Between April 5, 2017 and September 21, 2017, Zhengyang timely submitted responses to this questionnaire.²⁵ Between April 6, 2017 and September 22, 2017, Harmoni submitted timely responses to this questionnaire.²⁶

⁸ See Shenzhen Yuting Foodstuff Co., Ltd. Letter, “Fresh Garlic from the People’s Republic of China – No Sales Certification” dated February 8, 2017.

⁹ See Jinxiang Merry Vegetable Co., Ltd. Letter, “Fresh Garlic from the People’s Republic of China – No Sales Certification” dated February 8, 2017.

¹⁰ See Shandong Chenhe International Trading Co., Ltd. Letter, “Fresh Garlic from the People’s Republic of China – No Sales Certification” dated February 8, 2017.

¹¹ See Lanling Qingshui Vegetable Foods Co., Ltd. Letter, “Fresh Garlic from the People’s Republic of China – No Sales Certification” dated February 9, 2017.

¹² See Jinxiang Huameng Imp & Exp, Co., Ltd. Letter, “Fresh Garlic from the People’s Republic of China – No Sales Certification” dated February 10, 2017.

¹³ See Jinxiang Hejia Co., Ltd. Letter, “Fresh Garlic from the People’s Republic of China, Antidumping Duty: No Sales Certification” dated January 23, 2017.

¹⁴ See Bainong’s February 13, 2017 Separate Rate Certification (Bainong SRC).

¹⁵ See Feiteng’s January 30, 2017 Separate Rate Certification (Feiteng SRC).

¹⁶ See Harmoni’s February 21, 2017 Separate Rate Application (Harmoni SRA).

¹⁷ See QTF’s February 21, 2017 Separate Rate Application (QTF SRA).

¹⁸ See Sea-line’s January 23, 2017 Separate Rate Certification (Sea-line SRC).

¹⁹ See Shunchang’s January 30, 2017 Separate Rate Certification (Shunchang SRC).

²⁰ See Weifang’s February 21, 2017 Separate Rate Certification (Weifang SRC).

²¹ See Xinboda’s February 13, 2017 Separate Rate Certification (Xinboda SRC).

²² See Zhengyang’s February 7, 2017 Separate Rate Certification (Zhengyang SRC).

²³ See Memorandum, “Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China: 2015-2016, Selection of Respondents for Individual Examination” dated March 7, 2017.

²⁴ See Department Letter re: Antidumping Duty Questionnaire, dated March 8, 2017 (Initial AD Questionnaire).

²⁵ See Zhengyang’s April 5, 2017 Section A Questionnaire Response (Zhengyang April 5, 2017 AQR); *see also* Zhengyang’s April 21, 2017 Section C-D Questionnaire Response (Zhengyang April 21, 2017 CDQR); *see also* Zhengyang’s September 21, 2017 Supplemental Questionnaire Response (Zhengyang September 21, 2017 SQR).

²⁶ See Harmoni’s April 6, 2017 Section A Questionnaire Response (Harmoni April 6, 2017 AQR); *see also* Harmoni’s April 28, 2017 Section C-D Questionnaire Response (Harmoni April 28, 2017 CDQR); *see also* Harmoni’s September 22, 2017 Supplemental Questionnaire Response (Harmoni September 22, 2017 SQR).

On March 14, 2017, the Department requested information and comments relating to the selection of a surrogate country and surrogate values for this administrative review.²⁷ The Department received timely filed comments and/or rebuttals from Join, the petitioners, and Yudi. Between November 13, 2017, and November 20, 2017, Yudi and Zhengyang submitted further comments relating to the selection of a surrogate country and surrogate values.

Between April 6, 2017, and June 28, 2017, the CFTG and Harmoni submitted letters regarding the standing of the CFTG.²⁸ On June 27, 2017, the Department issued a questionnaire to the CFTG.²⁹ On August 3, 2017, the CFTG filed its response to the Department's questionnaire.³⁰ On August 17, 2017, the petitioners and Harmoni submitted rebuttal factual information pertaining to the standing of the CFTG.³¹ On October 13, 2017, the Department issued a supplemental questionnaire to the CFTG.³² On October 18, 2017, the CFTG failed to respond to the Department's supplemental questionnaire. Between October 16, 2017, and November 2, 2017, the petitioners, Harmoni, and the CFTG submitted further comments regarding the standing of the CFTG.³³ On November 21, 2017, the CFTG filed new factual information in

²⁷ See Department Letter, "Fresh Garlic from the People's Republic of China: Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information" dated March 14, 2017.

²⁸ See Harmoni Letter, "Harmoni Placing POR 21 Case and Rebuttal Brief on the Administrative Record in POR 22; Antidumping Duty Order on Fresh Garlic from the People's Republic of China" dated April 6, 2017 (Harmoni Submission of Factual Information Re: NMGGC); see also Harmoni Letter, "Request by Harmoni that CFTG Submissions be Accompanied by Certifications Signed by all CFTG Members; 22nd Administrative Review of Antidumping Duty Order on Fresh Garlic from the People's Republic of China" dated April 6, 2017; see also CFTG Letter, "22nd Administrative Review of Fresh Garlic from the People's Republic of China – Responding to Two (2) Submissions of Zhengzhou Harmoni Spice Co., Ltd. – Filed on Behalf of the CFTG" dated April 12, 2017; see also Harmoni Letter, "Request to Rescind POR 22 as to Harmoni; or Alternatively, Require that all CFTG Members Establish that they Qualify as Domestic Producers and Individually Certify all Submissions; 22nd Administrative Review of Antidumping Duty Order on Fresh Garlic from the People's Republic of China" dated June 15, 2017; see also Harmoni Letter, "Additional Factual Information re CFTG Company Certifications; 22nd Administrative Review of Antidumping Duty Order on Fresh Garlic from the People's Republic of China ('Garlic POR 22')" dated June 28, 2017.

²⁹ See Department Letter re: Domestic Interested Party Questionnaire, dated June 27, 2017 (CFTG Standing Questionnaire).

³⁰ See CFTG's August 3, 2017 Standing Questionnaire Response (CFTG August 3, 2017 QR).

³¹ See Petitioners Letter, "22nd Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – Petitioners' Submission of Information to Rebut, Clarify, or Correct Information Contained in the CFTG's August 3, 2017 Questionnaire Response" dated August 17, 2017; see also Harmoni Letter, "Harmoni's Response to Factual Information Submitted by the CFTG on July 12, 2017 and Resubmitted on August 3, 2017; 22nd Administrative Review of Antidumping Duty Order on Fresh Garlic from the People's Republic of China" dated August 17, 2017 (Harmoni CFTG QR Comments).

³² See Department Letter re: Domestic Interested Party Supplemental Questionnaire, dated October 13, 2017 (CFTG Standing SQR).

³³ See Petitioners' Letter, "22nd Administrative Review of Fresh Garlic from the People's Republic of China – Petitioners' Request to Rescind Administrative Review of Harmoni" dated October 16, 2017 (Petitioners Comments Re: CFTG); see also Harmoni Letter, "Renewal of Request to Rescind POR 22 as to Harmoni and Request for Extension of Time to Submit Final Surrogate Value Information 22nd Administrative Review of Fresh Garlic from the People's Republic of China" dated October 24, 2017; see also CFTG Letter, "Response to Business Proprietary Document Set Forth by Zhengzhou Harmoni Spice Co., Ltd." dated October 25, 2017; see also Petitioners' Letter, "22nd Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – Petitioners' Suggested Procedural Path for Rescission of CFTG-Named Chinese Exporter/Producers" dated October 30, 2017; see also CFTG Letter, "22nd Administrative Review of Fresh Garlic from the People's Republic of China

support of allegations regarding Harmoni.³⁴ On November 27, 2017, the Department placed a memorandum on the record accepting the information and establishing a deadline for rebuttal, clarification, or correction of the information for December 7, 2017, following the publication of these preliminary results.³⁵ Accordingly, the Department will not be analyzing this submission for these results.

On June 20, 2017 and October 6, 2017, the Department extended the deadline for the preliminary results of this review.³⁶ On November 22, 2017, the petitioners filed pre-preliminary comments regarding the selection of surrogate values.³⁷

New Shipper Reviews

On December 29, 2016, and January 3, 2017, in response to requests from Join and Yudi, respectively, the Department published a notice of initiation of new shipper reviews for the period November 1, 2015, to October 31, 2016.³⁸

On January 12, 2017, the Department issued questionnaires to Join and Yudi.³⁹ Between February 9, 2017, and September 22, 2017, Join and Yudi timely submitted responses to this questionnaire.⁴⁰

– Response to the Petitioners’ Suggested Procedural Path for Rescission of CFTG-Named Chinese Exporter/Producers and Surrogate Value Comments – filed on Behalf of the CFTG” dated November 2, 2017.

³⁴ See CFTG Letter, “22nd Administrative Review of Fresh Garlic from the People’s Republic of China – Resubmission of New Factual Information that Discredits Harmoni and Harmoni Submissions in the Garlic 21 AR and documents Harmoni placed on the Record in Garlic 22 AR – filed on Behalf of the CFTG” dated November 21, 2017.

³⁵ See Memorandum, “Fresh Garlic from the People’s Republic of China – 22nd Administrative Review (2015-2016): Accepting CFTG Submission of Factual Information” dated November 27, 2017.

³⁶ See Memorandum, “Fresh Garlic from the People’s Republic of China – 22nd Administrative Review (2015-2016): Extension of Deadline for the Preliminary Results of the Review” dated June 20, 2017; *see also* Memorandum, “Fresh Garlic from the People’s Republic of China – 22nd Administrative Review (2015-2016): Extension of Deadline for the Preliminary Results of the Review” dated October 6, 2017.

³⁷ See Petitioners’ Letter, “22nd Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China – Petitioners’ Pre-Preliminary Comments on the Selection of Surrogate Values” dated November 22, 2017 (Petitioners’ Pre-Preliminary Comments).

³⁸ See *Fresh Garlic from the People’s Republic of China: Initiation of Antidumping Duty New Shipper Review; 2015-2016*, 81 FR 95961 (December 29, 2016); *see also Fresh Garlic from the People’s Republic of China: Initiation of Antidumping Duty New Shipper Review; 2015-2016*, 82 FR 82 (January 3, 2017).

³⁹ See Department Letter re: Antidumping Duty New Shipper Review Questionnaire, dated January 12, 2017 (Initial AD NSR Questionnaire).

⁴⁰ See Yudi’s February 9, 2017 Section A Questionnaire Response (Yudi February 9, 2017 AQR); *see also* Yudi’s February 28, 2017 Section C-D Questionnaire Response (Yudi February 28, 2017 CDQR); *see also* Yudi’s September 22, 2017 Supplemental Questionnaire Response (Yudi September 22, 2017 SQR); *see also* Join’s February 9, 2017 Section A Questionnaire Response (Join February 9, 2017 AQR); *see also* Join’s February 28, 2017 Section C-D Questionnaire Response (Join February 28, 2017 CDQR); *see also* Join’s September 22, 2017 Supplemental Questionnaire Response (Join September 22, 2017 SQR);

On March 14, 2017, the Department requested information and comments relating to the selection of a surrogate country and surrogate values for these new shipper reviews.⁴¹ The Department received timely filed comments and/or rebuttals from the petitioners, Yudi, and Join.

On June 28, 2017, the Department aligned the new shipper reviews with the concurrent administrative review.⁴²

On November 21, 2017, the petitioners submitted pre-preliminary comments concerning the *bona fides* of Join's and Yudi's sales.⁴³ The Department did not have time to properly analyze these comments for these preliminary results; as such, we will address them in the final results.

III. SCOPE OF THE ORDER

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

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

IV. PARTIAL RESCISSION OF ADMINISTRATIVE REVIEW

Final Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of

⁴¹ See Department Letter, "Fresh Garlic from the People's Republic of China: Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information" dated March 14, 2017.

⁴² See Memorandum, "Alignment of New Shipper Review of Fresh Garlic from the People's Republic of China with Concurrent Administrative Review of Fresh Garlic from the People's Republic of China" dated June 28, 2017 (NSR Alignment Memorandum).

⁴³ See Petitioners' Letter, "24th New Shipper Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – Petitioners' Pre-Preliminary Comments Concerning the *Bona Fides* of Respondents' Sales" dated November 21, 2017.

publication of notice of initiation of the requested review. On April 13, 2017, review requests were timely withdrawn for six companies.⁴⁴ As discussed at the “Separate Rate Determination” section below, one of the companies for which the review was timely withdrawn, Hebei Golden Bird Trading Co., Ltd. (Golden Bird), is a part of the QTF-Entity.⁴⁵ The QTF-Entity filed a separate rate application; accordingly, the Department is continuing the review with respect to Golden Bird. In addition, the Department inadvertently included a company in its *Initiation Notice* for which there was no review request.⁴⁶ Therefore, we are rescinding this administrative review with respect to these six companies.⁴⁷

Preliminary Rescission of Administrative Review

In addition, as discussed below, the Department has preliminarily determined that the material misrepresentations and inconsistencies in the statements made by the CFTG make all of the submissions of the CFTG unreliable. Accordingly, the Department has preliminarily determined that the CFTG’s review request was invalid, and is preliminarily rescinding the review with respect to seven companies for which there is no other review request on the record.⁴⁸

During the course of an administrative review, the Department issues questionnaires and solicits information from interested parties. These responses become the basis of the administrative record, solely upon which the Department relies for its preliminary and final results.⁴⁹ In other words, the Department’s rationale underlying its determinations and results is based exclusively on record evidence submitted by, and certified by, interested parties. The Department acts within its expertise and discretion when it considers directly conflicting evidence and decides

⁴⁴ See Petitioners’ Letter, “22nd Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China – Petitioners’ Withdrawal of Certain Requests for Administrative Review” dated April 13, 2017; see also Harmoni Letter, “Harmoni Withdrawal of Review Request: Twenty-Second Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China (A-570-831)” dated April 13, 2017.

⁴⁵ The QTF-Entity includes QTF; QXF; Lianghe; Qingdao Tianhefeng Foods Co., Ltd. (QTHF); Qingdao Beixing Trading Co., Ltd. (QBT); Hebei Golden Bird Trading Co., Ltd.; and Huamei Consulting. See *Fresh Garlic from the People’s Republic of China: Final Results and Partial Rescission of the 21st Administrative Review; 2014-2015* 82 FR 27230 (June 14, 2017) (*Garlic 21 Final*), and accompanying Issues and Decision Memorandum (IDM), IDM at 26-35.

⁴⁶ The Department inadvertently initiated a review on Jinxiang Shengtai Fruits & Vegetables Co., Ltd. See *Initiation Notice* at 82 FR 4296.

⁴⁷ See *Fresh Garlic from the People’s Republic of China: Preliminary Results, Preliminary Rescission, and Final Rescission, In Part, of the 22nd Antidumping Duty Administrative Review and the Preliminary Results of the New Shipper Reviews; 2015-2016*, at Appendix I (dated concurrently with this memorandum) (*Preliminary Results*).

⁴⁸ The seven companies for which the CFTG made the only review request are: (1) Harmoni; (2) Jinxiang Jinma Fruits Vegetables Products Co., Ltd.; (3) Qingdao Hailize (Sea-line) International Trading Co., Ltd.; (4) Qingdao Ritai Food Co., Ltd.; (5) Juxian Huateng Food Co., Ltd.; (6) Zhonglian Nongchan Co., Ltd.; and (7) Qingdao Jiuyihongrun Foods Co., Ltd.

⁴⁹ 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.

which evidence to credit.⁵⁰ As noted above, interested parties have submitted extensive information regarding the credibility of the CFTG. Although each proceeding is distinct,⁵¹ the fact pattern of the instant administrative review mirrors that of the preceding review, and accordingly, the preceding review provides context to the analysis of the CFTG's standing and credibility. We detail these findings below for context.

In the twenty-first administrative review, the New Mexico Garlic Growers Coalition (the NMGGC), composed of Avrum Katz and Stanley Crawford, requested a review of two Chinese garlic exporters.⁵² As discussed in the final results of the preceding administrative review (*Garlic 21 Final*), based on the material misrepresentations and inconsistent statements made by the members of the NMGGC, the Department found that substantial record evidence undermined the veracity of all the NMGGC's submissions to the Department.⁵³ In order to evaluate the credibility of the NMGGC, the Department analyzed three factual claims that exemplified the contradictory nature of NMGGC's submissions and tied these factual claims to the record evidence that refuted them.⁵⁴

Specifically, the counsel for the NMGGC, Robert Hume, as well as the members of the NMGGC claimed: 1) Chinese exporters/businessmen were not involved in the NMGGC's review request; 2) neither the members of the NMGGC nor Mr. Hume received direct or indirect compensation for their participation in the twenty-first review; and 3) Mr. Crawford withdrew his review request of Harmoni in the twentieth administrative review because he was intimidated by a private investigator sent by Harmoni.⁵⁵ The Department's analysis explained how each of these factual claims was contradicted by other, more reliable, record evidence.⁵⁶

With regard to the first claim, the Department pointed to several email communications between 2010 and 2017 that demonstrated that, "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 {twenty-first administrative} review, these efforts took the form of the NMGGC's review request."⁵⁷ Concerning the NMGGC's second claim, the Department cited to inconsistent statements made by the members and counsel of the NMGGC, and bank and import documentation indicating that the members and counsel for the NMGGC received money, travel, and garlic processing equipment in exchange for their participation in the review.⁵⁸ Regarding the third claim, the Department referred to the contradictory statements made by Mr. Crawford and Mr. Hume which

⁵⁰ 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).

⁵¹ See, e.g., *E.I. DuPont de Nemours & Co. v. United States*, Slip Op. 98-07, 1998 WL 42598, 22 C.I.T. 19, 32 (Jan. 29, 1998).

⁵² The NMGGC's review request included Harmoni and Jinxiang Jinma Fruits and Vegetables Products Co., Ltd. (Jinxiang Jinma).

⁵³ See *Garlic 21 Final* IDM at 7-23.

⁵⁴ *Id.* at 17-23.

⁵⁵ *Id.* at 18.

⁵⁶ *Id.* at 17-23.

⁵⁷ *Id.* at 18-20.

⁵⁸ *Id.* at 20-21.

showed that Mr. Crawford had withdrawn his review request at the behest of Mr. Hume’s clients, not because he was intimidated by a private investigator.⁵⁹

Based on the inconsistencies and material misrepresentations made by the NMGGC – supported by the three refuted factual claims – the Department found that the NMGGC lacked credibility and that none of its submissions could be used in order to make a determination regarding the NMGGC’s status as a domestic interested party.⁶⁰ Furthermore, because the NMGGC did not have status as a domestic interested party, the Department found that the NMGGC’s review request was invalid *ab initio*, and rescinded the review with respect to Harmoni and Jinxiang Jinma.⁶¹

In the instant review, the CFTG requested that the Department review 17 garlic exporters.⁶² The review request indicated that the CFTG was an expansion of the NMGGC’s membership and listed the CFTG’s four members: the members of the NMGGC, Mr. Crawford and Mr. Katz, and two new members, Alex Pino and Suzanne Sanford. Following the CFTG’s November 28, 2016, request for review, its membership changed three times: Mr. Katz and Mr. Pino withdrew from the CFTG, and Melinda Bateman joined.⁶³

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.⁶⁴ If the Department does not receive a valid review request within the allotted time frame from an interested party, the Department will not conduct a review. It follows that an interested party, within the meaning of section 771(9) of the Act, must have standing at the time of the review request, or the request will not be considered valid. Accordingly, as discussed below, the Department’s analysis of the standing of the CFTG in this case pertains to the original requesting members of the CFTG, Mr. Katz, Mr.

⁵⁹ *Id.* at 21.

⁶⁰ *Id.* at 7-23.

⁶¹ *Id.* at 7-23.

⁶² The CFTG timely filed two identical review requests, however, only one of the review requests contained a certification on behalf of the CFTG’s counsel, Robert Hume. See CFTG Letter, “Fresh Garlic from the People’s Republic of China – CFTG’s Request for 22nd Antidumping Administrative Review of Fresh Garlic from the People’s Republic of China” dated November 28, 2016 (CFTG Review Request).

⁶³ (1) On December 14, 2016, the CFTG submitted a letter notifying the Department of Mr. Katz withdrawal of participation from the review; (2) on January 18, 2017, the CFTG submitted a letter identifying Melinda Bateman as a member of the CFTG; and (3) on February 15, 2017, the CFTG submitted a letter notifying the Department that Alex Pino had withdrawn from the CFTG. See CFTG Letter, “22nd Administrative Review of Fresh Garlic from the People’s Republic of China – Withdrawal of Avrum Katz from the Coalition for Fair Trade in Garlic (CFTG)” dated December 14, 2016; see also CFTG Letter, “22nd Administrative Review of Fresh Garlic from the People’s Republic of China – Notice of Appearance and Application for Administrative Protective Order (APO) filed by counsel on behalf of the CFTG” dated January 18, 2017; see also CFTG Letter, “22nd Administrative Review of Fresh Garlic from the People’s Republic of China – Withdrawal of Alex Pino from the Coalition for Fair Trade in Garlic (CFTG)” dated February 15, 2017.

⁶⁴ See section 751(a)(1). (“At least once during each 12-month period beginning on the anniversary of the date of publication of...an antidumping duty order under this title...the administering authority, if a request for such a review has been received after publication of notice of such review in the Federal Register, shall...review, and determine...the amount of any antidumping duty...”); see also 10 CFR 351.213(b).

Crawford, Ms. Sanford, and Mr. Pino. Ms. Bateman attempted to join the review request much later, and therefore is not relevant to the standing of the CFTG at the time of the review request. We make no findings regarding Ms. Bateman.

In its review request, the CFTG invoked language referring to both sections 771(9)(C) and 771(9)(E) of the Act.⁶⁵ Section 771(9)(C) of the Act defines an “interested party” as “a manufacturer, producer, or wholesaler in the United States of a domestic like product,” while section 771(9)(E) of the Act defines an “interested party” as “a trade or business association a majority of whose members manufacture, produce, or wholesale a domestic like product in the United States.” For a domestic interested party defined as a trade or business association pursuant to section 771(9)(E) of the Act, a majority of members must have standing within the meaning of section 771(9)(C) in order for the association to request a review. By contrast, individual domestic interested parties, pursuant to section 771(9)(C) of the Act, can each separately have standing to request a review.⁶⁶

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.⁶⁷ The Department here again reiterates this. The domestic standing requirements in the law are broad, and we decline to set a particular level of production that a domestic producer must reach in order to have standing. That said, the Department must nevertheless satisfy itself that a domestic producer’s submissions and claims of standing are credible and supported by substantial evidence.

As noted above, the Department issued a questionnaire to the members of the CFTG seeking further information and documentation regarding the newly-formed CFTG, and confirmation that the members of the CFTG were interested parties pursuant to section 771(9) of the Act, and thus, had standing to request a review. Mr. Crawford, Ms. Sanford, and Ms. Bateman submitted responses to the Department’s questionnaire; however, having already withdrawn from the CFTG, Mr. Pino and Mr. Katz did not. Accordingly, of the four original requesting members party to the CFTG’s review request, the Department only received responses from Mr. Crawford and Ms. Sanford, as well as the counsel at the time of the review request, Mr. Hume.

The petitioners argue that the Department should analyze the CFTG’s submission as an association interested party, within the meaning of section 771(9)(E) of the Act.⁶⁸ Further, they argue that a majority of the CFTG’s members are not credible, and thus do not have standing to request an administrative review.⁶⁹

⁶⁵ Specifically, the CFTG invoked both section 771(9)(C) of the Act, which pertains to individual domestic interested parties and 19 CFR 351.102(b)(29)(vii), which parallels section 771(9)(E) of the Act and pertains to association domestic interested parties. *See* CFTG Review Request.

⁶⁶ *See* sections 771(9)(C) and 771(9)(E) of the Act.

⁶⁷ *See, e.g., Certain Activated Carbon from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013, 79 FR 70163 (November 25, 2014) (Activated Carbon), and accompanying Issues and Decision Memorandum at Comment 1.*

⁶⁸ *See* Petitioners Comments Re: CFTG

⁶⁹ *Id.*

Regardless of whether the CFTG requested the review as an association or as individuals, submissions and statements made by each of the members of the requesting party contained material misrepresentations and inconsistencies. We explain below, in turn, how several factual claims are contradicted by record evidence.

Claims regarding remuneration to Mr. Crawford

The issue of Mr. Crawford's credibility is germane to his claim to have standing in this review. We note that much of the extensive factual information with respect to Mr. Crawford's credibility – including the numerous affidavits, declarations, email communications, and narrative submissions upon which the Department relied in making its determination in the *Garlic 21 Final* – is on the record of this review.⁷⁰ We continue to find, based on this record evidence from last year's review now on the record of the instant review, that Mr. Crawford's claims of domestic producer status are unreliable and not to be afforded any weight. Moreover, our analysis of statements and information submitted by Mr. Crawford in the instant review casts further doubt on his credibility.

In an accompanying declaration to the CFTG's standing questionnaire response, Mr. Hume declared that the "only payment I made to Crawford was \$50,000 on March 2015, about the Garlic 20 AR. This payment was made from my personal bank account and was not reimbursed by any Chinese entity."⁷¹ Contrary to Mr. Hume's claim, Hume and Associates LLC (H&A)'s accounting records indicate that Mr. Hume's firm recorded the \$50,000 payment made to Mr. Crawford as a business expense under "independent contractors."⁷² Rather than paying Mr. Crawford from a personal account, as Mr. Hume swore under penalty of perjury,⁷³ the payment was made from H&A's account and booked as an expense to the firm.

In the same submission, Mr. Crawford states, "I received no remuneration or equipment gratis during 2015 and 2016."⁷⁴ Not only does this statement directly contradict Mr. Hume's declaration regarding his payment to Mr. Crawford, but extensive record evidence, including Mr. Crawford's own statements, indicate that Mr. Crawford received further remuneration in the form of compensation for a trip to China in July of 2015.⁷⁵

Claims by Ms. Sanford regarding income tax statements

The Department requested that each member of the CFTG provide the income tax returns filed for 2015 and 2016. Ms. Sanford did not provide tax documentation for either year. In her response to the Department, regarding her 2015 returns, she stated "{I}n 2015 I did not make sales of garlic because of a devastating fire *on my property*... Because to {sic} the fire, I did not file a Schedule F for the 2015 tax year."⁷⁶ With regard to her 2016 returns, Ms. Sanford stated,

⁷⁰ See Harmoni Submission of Factual Information Re: NMGGC; see also *Garlic 21 Final*.

⁷¹ See CFTG August 3, 2017 QR at Appendix 16, para 7.

⁷² See Harmoni CFTG QR Comments at Exhibit 37.

⁷³ See CFTG August 3, 2017 QR at Appendix 16.

⁷⁴ *Id.* at Appendix 5.

⁷⁵ See *Garlic 21 Final*, IDM at 20; see also Harmoni Submission of Factual Information Re: NMGGC.

⁷⁶ See CFTG August 3, 2017 QR at Appendix 12.

“I requested an extension to file my 2016 taxes and I can provide a copy of the Schedule F form after I file.”⁷⁷ Record evidence does not support Ms. Sanford’s claims.

Specifically, regarding the claim that Ms. Sanford could not provide her tax documentation for 2015, public documents and a private investigator’s sworn statement indicate that Ms. Sanford was only involved in one fire in 2015 which took place at a residence not belonging to Ms. Sanford in April of that year.⁷⁸

These statements and public records indicate that, although a fire occurred in April of 2015 as Ms. Sanford alleged, it is unclear how the fire was related to Ms. Sanford’s ability to provide the Department with her 2015 tax returns. The deadline for filing tax returns for 2015 was April 2016, nearly a year after the fire at issue. Moreover, contrary to Ms. Sanford’s claim, the fire did not take place on her property, which would make it unlikely that the relevant tax documentation would have been destroyed in the fire.⁷⁹ Assuming *arguendo* that Ms. Sanford kept her tax documentation at the residence where the fire took place, *and* that a fire destroyed Ms. Sanford’s tax files on this other property, this still would not preclude Ms. Sanford from filing her 2015 taxes in April 2016 using information for the remainder of 2015. Furthermore, Ms. Sanford did not provide any documentation or evidence to support her claim that the United States Internal Revenue Service (IRS) did not require her to file her 2015 taxes because of a fire.

With regard to Ms. Sanford’s claim that she could provide her 2016 tax documentation after she filed,⁸⁰ the Department issued a supplemental questionnaire requesting both the extension request to the IRS and her 2016 tax returns (including the Schedule F form).⁸¹ Ms. Sanford failed to respond to the Department’s supplemental questionnaire.

Claims by Ms. Sanford regarding selling garlic at the Taos Farmer’s Market

Ms. Sanford claims that she sold garlic in 2016 at the Farmer’s Market in Taos, New Mexico.⁸² The Taos Farmer’s Market Manager indicated that for the past four years that she has held this position, Ms. Sanford has never been registered to be a vendor at the market.⁸³ Thus, contrary to Ms. Sanford’s claims that she sold garlic at the farmer’s market, the record of the review shows that Ms. Sanford has never been registered as a vendor, nor is she recognized by the manager of the market. To be clear, we do not mean to suggest that Ms. Sanford’s sales or production levels are questionable because she does not sell at the market. Rather, the inconsistency of her statements, amid conflicting record evidence, calls into question the veracity of any statements made by Ms. Sanford on the administrative record.

Based on these material misrepresentations and inconsistencies, neither Ms. Sanford nor Mr. Crawford has standing pursuant to section 771(9)(C) of the Act. Importantly, as a result, even if the CFTG claimed to have standing pursuant to section 771(9)(E) of the Act as a trade or business association, a majority of the members of the association would not have standing at the time the review request was made. Ms. Sanford and Mr. Crawford, as explained above, are not

⁷⁷ See CFTG August 3, 2017 QR at Appendix 12.

⁷⁸ See Harmoni CFTG QR Comments at Exhibit 23-25.

⁷⁹ *Id.* at Exhibit 23-24.

⁸⁰ See CFTG August 3, 2017 QR at Appendix 12.

⁸¹ See CFTG Standing SQR.

⁸² See CFTG August 3, 2017 QR at Appendix 12.

⁸³ See Harmoni CFTG QR Comments at Exhibit 27.

credible and do not have standing as individuals, and Mr. Katz and Mr. Pino did not respond to the questionnaires, meaning none of the individual members of the proposed association have standing under section 771(9)(C) of the Act. Therefore, the association as a whole did not have standing, under the definition of “interested party” in section 771(9)(E) of the Act.

In sum, the question of the CFTG’s status as “a domestic interested party” is fundamental to its ability to request an administrative review of a Chinese exporter. These three examples demonstrate the repeated inconsistencies in the CFTG’s record submissions, and the multiple contradictions between the CFTG’s claims and the record evidence. Furthermore, these examples demonstrate that none of the CFTG’s submissions and claims can be used as a reliable basis for reaching a determination that the CFTG is a “domestic interested party” that can request an administrative review. As stated above, regardless of whether the CFTG requested the review as an association or as individuals, submissions and statements made by each of the members of the requesting party contained material misrepresentations and inconsistencies. The Department has preliminarily concluded that the CFTG and its individual members’ inability to provide complete and accurate responses taint all 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 August 3, 2017, questionnaire response in which the CFTG provided its production and business information to support its claim for “domestic interested party” status. Because we determine that the entirety of the CFTG’s information, including its garlic production information, is unusable, we find that the CFTG has failed to demonstrate that it is a domestic interested party. Accordingly, its review request was invalid *ab initio*. In conclusion, the Department is preliminarily rescinding the administrative review with respect to the seven companies that were requested solely by the CFTG for which another valid review request was not made.

V. PRELIMINARY DETERMINATION OF NO SHIPMENTS

As discussed in the background section above, 14 companies timely filed “no shipment” certifications stating that they had no entries of subject merchandise during the POR. However, no review requests were submitted in reference to five of these companies.⁸⁴ Accordingly, the Department did not conduct a review of these five companies. Moreover, review requests were timely withdrawn for two companies that filed no shipment certifications.⁸⁵ In addition, as discussed at the “Separate Rate Determination” section below, two companies that timely filed no shipment certifications are part of the QTF-Entity,⁸⁶ which filed a separate rate application.⁸⁷ Accordingly, their certifications of no shipment are moot.

⁸⁴ The five companies for which there were no review requests, but for which no shipment/no sales certifications were submitted are: (1) Jinxiang Huameng Imp & Exp Co., Ltd.; (2) Jinxiang Merry Vegetable Co., Ltd.; (3) Lanling Qingshui Vegetable Foods Co., Ltd.; (4) Shandong Chenhe International Trading Co., Ltd.; (5) Shenzhen Yuting Foodstuff Co., Ltd.

⁸⁵ The two companies for which review requests were timely withdrawn that also filed no shipment/no sales certifications are: (1) Jining Alpha Food Co., Ltd.; and (2) Jinxiang Hejia Co., Ltd.

⁸⁶ The QTF-Entity includes QTF; QXF; Lianghe; Qingdao Tianhefeng Foods Co., Ltd. (QTHF); Qingdao Beixing Trading Co., Ltd. (QBT); Golden Bird; and Huamei Consulting. See *Garlic 21 Final*, IDM at 26-35.

⁸⁷ The two companies which filed no shipment/no sales certifications, but are part of the QTF-Entity are: (1) Qingdao Lianghe International Trade Co., Ltd.; and (2) Qingdao Xintianfeng Foods Co., Ltd.

For the remaining five companies, the Department asked CBP to conduct a query on potential shipments made by these companies during the POR. CBP has provided no evidence that contradicted these companies' claims of no shipments during the POR. Based on the certifications by these companies and our analysis of CBP information, we preliminarily determine that the companies listed in Appendix III of the *Preliminary Results* did not have any reviewable transactions during the POR. In addition, the Department finds that, consistent with its refinement to its assessment practice in non-market economy (NME) cases, further discussed below, it is appropriate not to rescind the review in part, in these circumstances, but to complete the review with respect to these five companies and issue appropriate instructions to CBP based on the final results of the review.⁸⁸

VI. NEW SHIPPER REVIEWS

1. New Shipper Review Framework

Any weighted-average dumping margin determined in a new shipper review (NSR) shall be solely based on *bona fide* sales during the period of review.⁸⁹ Section 751(a)(2)(B)(iv) of the Act sets forth the criteria that the Department will examine to determine if sales, such as the sales by Join and Yudi, under review in these new shipper reviews, are *bona fide*. In evaluating whether the sales in an NSR are commercially reasonable or typical of normal business practices, and, therefore, *bona fide*, the Department considers, “depending on the circumstances surrounding such sales”:

(I) the prices of such sales; (II) whether such sales were made in commercial quantities; (III) the timing of such sales; (IV) the expenses arising from such sales; (V) whether the subject merchandise involved in such sales was resold in the United States at a profit; (VI) whether such sales were made on an arms-length basis; and (VII) any other factor {it} determines to be relevant as to whether such sales are, or are not, likely to be typical of those the exporter or producer will make after completion of the review.⁹⁰

Although some *bona fide* issues may share commonalities across various Department cases, the Department examines the *bona fide* nature of a sale on a case-by-case basis, and the analysis may vary with the facts surrounding each sale. Accordingly, the Department considers a number of factors in its *bona fides* analysis, “all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise.”⁹¹ In *Tianjin Tiancheng Pharmaceutical Co. v. United States*, the Court of International Trade (CIT) also affirmed the Department’s decision that any factor which indicated that the sale under consideration is not likely to be typical of those which

⁸⁸ See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011). See also “Assessment Rates” section below.

⁸⁹ See section 751(a)(2)(B)(iv) of the Act.

⁹⁰ *Id.*

⁹¹ See *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1342 (CIT 2005) (*New Donghua*) (citing *Fresh Garlic from the People’s Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002)).

the producer will make in the future is relevant,⁹² and found that the weight given to each factor investigated will depend on the circumstances surrounding the sale.⁹³ Finally, in *New Donghua*, the CIT affirmed the Department's practice of evaluating the circumstances surrounding a new shipper review sale, so that a respondent does not unfairly benefit from an atypical sale and obtain a lower dumping margin than the producer's usual commercial practice would dictate.⁹⁴ The Department's practice makes clear that the Department will examine objective, verifiable factors to ensure that a sale is not being made to circumvent an antidumping duty order.⁹⁵ Thus, a respondent is on notice that it is unlikely to establish the *bona fides* of a sale merely by claiming to have sold in a manner representative of its future commercial practice.⁹⁶ Where the Department finds that a sale is not *bona fide*, the Department will exclude the sale from its export price calculations.⁹⁷ When the respondent under review makes only one sale and the Department finds the transaction atypical, "exclusion of that sale as non-*bona fide* necessarily must end the review, as no data will remain on the export price side of (the Department's) antidumping duty calculation."⁹⁸

2. *Bona Fides* Analysis

The Department preliminarily finds that both Yudi's and Join's sales of subject merchandise were made on a *bona fide* basis. Specifically, the Department preliminarily finds that: (1) the timing of each sale by itself does not indicate that the sale might not be *bona fide*; (2) record evidence indicates that the prices and quantities of the sales are commercially reasonable and not atypical of normal business practices of fresh garlic exporters; (3) Yudi and Join did not incur any extraordinary expenses arising from the transactions; (4) Yudi and Join's unaffiliated U.S. customers appear to have made profit in the resale of subject merchandise; and (5) the new shipper sales were made between Yudi and Join and their respective unaffiliated U.S. customers at arm's length.⁹⁹ Therefore, the Department preliminarily finds that Yudi's and Join's sales of subject merchandise to the United States are *bona fide* for the purposes of these NSRs.

⁹² See *Tianjin Tiancheng Pharmaceutical Co. v. United States*, 366 F. Supp. 2d 1246, 1250 (CIT 2005) (TTPC).

⁹³ *Id.* at 1263.

⁹⁴ See *New Donghua*, 341 F. Supp. 2d at 1344.

⁹⁵ *Id.* at 1339.

⁹⁶ *Id.*

⁹⁷ See TTPC, 366 F. Supp 2d at 1249.

⁹⁸ *Id.*

⁹⁹ For the complete analysis, see Memorandum, "Bona Fide Nature of the Sales in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China (PRC): Zhengzhou Yudi Shengjin Agricultural Trade Co., Ltd." dated concurrently with this memorandum; see also Memorandum, "Bona Fide Nature of the Sales in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China (PRC): Qingdao Joinseafoods Co., Ltd. and Join Food Ingredient Inc." dated concurrently with this memorandum.

VII. DISCUSSION OF METHODOLOGY FOR ADMINISTRATIVE REVIEW AND NEW SHIPPER REVIEWS

Non-Market Economy Status

The Department considers the PRC to be an NME country.¹⁰⁰ In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the Department. Therefore, we continue to treat the PRC as an NME country for purposes of these preliminary results.

Separate Rate Determination

In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may apply for separate rate status in NME reviews.¹⁰¹ In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assessed at a single antidumping duty rate.¹⁰² It is the Department's policy to assign all exporters of subject merchandise in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.¹⁰³ Exporters can demonstrate this independence through the absence of both *de jure* (in law) and *de facto* (in fact) governmental control over export activities.¹⁰⁴ The Department analyzes each entity's export independence under a test first articulated in *Sparklers* and as further developed in *Silicon Carbide*.¹⁰⁵

In order to demonstrate separate-rate status eligibility, the Department normally requires an entity, for which a review was requested, and which was assigned a separate rate in a previous segment, to submit a separate-rate certification stating that it continues to meet the criteria for obtaining a separate rate.¹⁰⁶ For entities that were not assigned a separate rate in a previous segment, however, the Department requires a separate rate application.¹⁰⁷

Separate Rate Applications and Certifications

As noted under the "Background" section of this memorandum, nine companies subject to the administrative review timely submitted separate rate status certifications or applications. As

¹⁰⁰ See *Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination*, 82 FR 50858, 50861 (November 2, 2017) and accompanying decision memorandum, *China's Status as a Non-Market Economy*.

¹⁰¹ See *Initiation Notice*.

¹⁰² 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>.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ See *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*); see also *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

¹⁰⁶ See *Initiation Notice*.

¹⁰⁷ *Id.*

discussed above, Zhengyang was selected as a mandatory respondent, and the Department is preliminarily rescinding the review with respect to Harmoni. As explained below, we preliminarily find that the separate rate application for the QTF-Entity is deficient, and in these preliminary results, we are not granting separate rate status to the QTF-Entity. The Department intends to allow the QTF-Entity the opportunity to cure any deficiencies noted in its separate rate application following the *Preliminary Results*.

The remaining timely-filed separate rate certifications came from Bainong, Feiteng, Sea-line, Shunchang, Weifang, and Xinboda.

Each company certified that it had suspended entries during the POR.¹⁰⁸

1. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.¹⁰⁹

The evidence placed on the record of the instant administrative review by Bainong, Feiteng, Sea-line, Shunchang, Weifang, and Xinboda demonstrates an absence of *de jure* government control under the criteria identified in *Silicon Carbide* and *Sparklers*.

2. Absence of *De Facto* Control

Typically, the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.¹¹⁰ The Department determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from granting a separate rate.

The evidence placed on the record of the instant administrative review by Bainong, Feiteng, Sea-line, Shunchang, Weifang, and Xinboda demonstrates an absence of *de facto* government control under the criteria identified in *Silicon Carbide* and *Sparklers*. Accordingly, the Department has

¹⁰⁸ See Bainong SRC; see also Feiteng SRC; see also QTF SRA; see also Sea-line SRC; see also Shunchang SRC; see also Weifang SRC; see also Xinboda SRC.

¹⁰⁹ See *Sparklers*, 56 FR at 20589.

¹¹⁰ See *Silicon Carbide*, 59 FR at 22586-87; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

preliminarily determined that these six companies have demonstrated that they are eligible for a separate rate.

Separate Rate for Non-Selected Companies

Pursuant to section 777A(c) of the Act, because of the large number of exporters/producers, and lacking the resources to examine all companies, the Department determined that it was not practicable to individually examine all companies subject to this review and, thus, employed a limited examination methodology. Pursuant to section 777A(c)(2)(B) of the Act, we selected Zhengyang and Harmoni, the exporters accounting for the largest volume of imports of the subject merchandise, as the respondents in this review.¹¹¹

As discussed above, Bainong, Feiteng, Sea-line, Shunchang, Weifang, and Xinboda have demonstrated eligibility for a separate rate, but were not selected for individual examination in this review. The statute and the Department's regulations do not directly address the establishment of a rate to be applied to companies not selected for individual examination where the Department limited its examination in an AR pursuant to section 777A(c)(2) of the Act. The Department's practice in cases involving limited selection based on exporters accounting for the largest volume of imports has been to look to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate in an investigation using margins established for individually investigated producers and exporters, excluding any zero or *de minimis* margins or any margins based entirely on facts available.¹¹²

In the administrative review, Zhengyang is the only reviewed respondent that received a weighted-average margin. Therefore, the Department preliminarily determines that Zhengyang's calculated weighted-average dumping margin of \$2.69 per kilogram will be assigned to Bainong, Feiteng, Sea-line, Shunchang, Weifang, and Xinboda.

Separate Rate Status of the QTF-Entity

In the preceding administrative review, the Department found that QTF, QXF, Lianghe, Qingdao Tianhefeng Foods Co., Ltd. (QTHF), Qingdao Beixing Trading Co., Ltd. (QBT), Golden Bird, and Huamei Consulting were affiliated, and collapsed these companies into the QTF-Entity.¹¹³ As noted above, QTF submitted a separate rate application for QTF only.¹¹⁴ In this application, QTF identified its affiliations with other producers or exporters of subject merchandise,¹¹⁵ indicating that it was affiliated with QXF, QTHF, Lianghe, and QBT during the POR. However, because our finding of affiliation between QTF and Golden Bird in the last administrative review occurred after QTF's separate rate application in the instant review, QTF failed to name Golden

¹¹¹ See Memorandum, "Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: 2015-2016: Selection of Respondents for Individual Examination" dated March 7, 2017.

¹¹² See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Preliminary Results and Partial Rescission of the Antidumping Duty Administrative Review and Preliminary Results of the New Shipper Review; 2012-2013*, 79 FR 42758 (July 23, 2014).

¹¹³ See *Garlic 21 Final*, IDM at 26-35.

¹¹⁴ See QTF SRA.

¹¹⁵ See section 771(33) of the Act.

Bird as an affiliated producer or exporter of subject merchandise.¹¹⁶ Moreover, the record does not contain a separate and complete application for separate rate status from each constituent member of the QTF-Entity, other than QTF itself.¹¹⁷

Accordingly, we preliminarily find that the record does not contain sufficient evidence of separate rate status for the entire QTF-Entity. However, the Department intends to allow the QTF-Entity the opportunity to cure any deficiencies noted in its separate rate application following the *Preliminary Results*.

Margin for Companies Not Receiving a Separate Rate

As noted above, we initiated administrative reviews for 35 producers/exporters of garlic,¹¹⁸ rescinded the reviews of six producers/exporters, preliminarily rescinded the reviews of seven producers/exporters, confirmed that five producers/exporters had no shipments of subject merchandise during the POR, and granted separate rates to six non-selected producers/exporters. In addition, we determined that Zhengyang was eligible for a separate rate. Therefore, there are eight entities which do not fall within the abovementioned categories that are still subject to the administrative review. For these remaining eight entities that did not demonstrate their eligibility for separate rate status, the Department finds that they have not rebutted the presumption of government control and, therefore, are considered to be part of the PRC-wide entity.

The PRC-Wide Entity

Upon initiation of the administrative review, we provided the opportunity for all companies upon which the review was initiated to complete either the separate-rate application or certification.¹¹⁹ In NME proceedings, “‘rates’ may consist of a single dumping margin applicable to all exporters and producers.”¹²⁰ As explained above in the “Separate Rates” section, all companies within the PRC are considered to be subject to government control unless they are able to demonstrate an absence of government control with respect to their export activities. Such companies are assigned a single AD rate distinct from the separate rate(s) determined for companies that are found to be independent of government control with respect to their export activities. We consider the influence that the government has been found to have over the economy to warrant determining a rate for the entity that is distinct from the rates found for companies that provided sufficient evidence to establish that they are not subject to government control.¹²¹ In this regard,

¹¹⁶ See QTF SRA at 20.

¹¹⁷ Footnote 2 of the Department’s Standard Separate Rate Application states, “{e}nsure that each applicant seeking separate rate status is submitting a separate and complete application regardless of any common ownership or affiliation between firms and regardless of foreign ownership.” *Id.* at 8.

¹¹⁸ The Department’s *Initiation Notice* inadvertently listed Jining Shunchang Import & Export Co., Ltd. twice. *See Initiation Notice*.

¹¹⁹ The separate-rate application and certification are available at: <http://enforcement.trade.gov/nme/nme-sep-rate.html>.

¹²⁰ See 19 CFR 351.107(d).

¹²¹ See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People’s Republic of China: Final Results of 2005-2006 Administrative Review and Partial Rescission of Review*, 72 FR 56724 (October 4, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

no record evidence indicates that such government influence is no longer present or that our treatment of the PRC-wide entity is otherwise incorrect.

The Department's policy regarding conditional review of the PRC-wide entity applies to this review.¹²² Under this policy, the PRC-wide entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity. Because no party requested a review of the PRC-wide entity in this review, the entity is not under review, and the entity's rate is not subject to change. As such, the PRC-wide rate from the previous review remains unchanged, and the PRC-wide entity is receiving a margin of \$4.71 per kilogram.¹²³

Surrogate Country and Surrogate Value Data for the Administrative Review and New Shipper Reviews

On March 14, 2017, the Department sent interested parties in the administrative review and new shipper reviews a letter inviting comments on the concurrently released list of potential surrogate countries and primary surrogate country (SC) selection, as well as surrogate value (SV) data.¹²⁴ On May 2, 2017, the Department set deadlines of May 12, 2017, in the administrative review and new shipper reviews, for comments on the selection of the primary surrogate country and surrogate values and May 19, 2017, for rebuttal comments, respectively.

On October 6, 2017, the Department extended the deadline for the preliminary results of the administrative review to November 30, 2017.¹²⁵ Pursuant to 19 CFR 351.301(c)(3)(ii), the deadline for submission of factual information to value factors of production was extended to October 31, 2017.

On October 27, 2017, at the request of Harmoni, the Department extended the deadline to submit final surrogate value comments and rebuttal comments to November 3, 2017, and November 13, 2017, respectively.¹²⁶ On November 3, 2017, at the request of the petitioners, the Department further extended the deadline to submit final surrogate value comments and rebuttal comments to November 20, 2017, and November 30, 2017, respectively.¹²⁷

¹²² See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963, 65970 (November 4, 2013).

¹²³ See, e.g., *id.*; see also *Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the 19th Antidumping Duty Administrative Review; 2012-2013*, 80 FR 34141, 34142 (June 15, 2015).

¹²⁴ See Department Letter, "Fresh Garlic from the People's Republic of China: Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information" dated March 14, 2017; see also Memorandum, "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")" (OP Memorandum) dated March 10, 2017. The Department determined that Brazil, Mexico, Romania, Bulgaria, South Africa, and Thailand are countries whose per capita gross national incomes (GNI) are comparable to the PRC in terms of economic development.

¹²⁵ See Memorandum, "Fresh Garlic from the People's Republic of China: 22nd Administrative Review: Extension of Deadline for the Preliminary Results of the Review" dated October 6, 2017.

¹²⁶ See Memorandum, "22nd Administrative Review of the Antidumping Duty Order on Garlic from the People's Republic of China: Extension of Time Limit for Final Surrogate Value Comments" dated October 26, 2017.

¹²⁷ See Memorandum, "22nd Administrative Review of the Antidumping Duty Order on Garlic from the People's Republic of China: Second Extension of Time Limit for Final Surrogate Value Comments" dated November 3, 2017.

1. Surrogate Country Comments and Rebuttal Comments for the Administrative Review and New Shipper Reviews

As discussed below, the petitioners' surrogate country and surrogate value submissions on the administrative review record are nearly identical to its surrogate country and surrogate value submission on the record of the new shipper reviews.¹²⁸ In addition, Zhengyang's surrogate country and surrogate value submissions on the record of the administrative review are identical to Yudi's surrogate country and surrogate value submissions on the record of the new shipper reviews. Harmoni's surrogate country and surrogate value submissions are only on the record of the administrative review.

On April 14, 2017, the petitioners submitted comments on the record of the new shipper reviews.¹²⁹ On May 12, 2017, the petitioners submitted those same comments, with certain additional surrogate values specific to Zhengyang's reported factors of production, on the record of this proceeding.¹³⁰ In these submissions, the petitioners argue that the Department should choose Romania as the primary surrogate country because it satisfies all surrogate country selection criteria, and has the best available information to value respondents' factors of production (FOPs).¹³¹ Specifically, the petitioners argue that Romania is at a level of economic development similar to the PRC and is a significant producer of garlic.¹³² Furthermore, the petitioners also argue that the quality and reliability of the Romanian data are superior because they include tax-free, monthly, POR-specific price information for input garlic bulbs, the single most important factor in production.¹³³

On April 14, 2017, Join and Yudi submitted comments requesting that the Department select Mexico as the primary surrogate country.¹³⁴ Join and Yudi argue that Mexico is a suitable surrogate country because it meets all of the Department's criteria for selection of a surrogate country. Namely, Mexico is at the same level of economic development as the PRC, it is a significant producer of garlic, and has available high-quality data.¹³⁵

¹²⁸ The petitioners submitted their surrogate country and value comments from the new shipper reviews as their surrogate country and value comments on the administrative review. In addition, the petitioners submitted additional surrogate values for the FOPs used by Zhengyang and/or Harmoni, but not used by the new shipper review respondents.

¹²⁹ See NSR Alignment Memorandum.

¹³⁰ See Petitioners' Letter, "22nd Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – Petitioners' Comments on Surrogate Country Selection and Preliminary Submission of Surrogate Value Information" dated May 12, 2017 (Petitioners SC Comments).

¹³¹ See Petitioners' Letter, "24th New Shipper Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – Petitioners' Comments on Surrogate Country Selection" dated April 14, 2017 (Petitioners NSR SC Comments); see also Petitioners' Letter, "24th New Shipper Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – Petitioners' Preliminary Surrogate Value Comments" dated April 14, 2017. (Petitioners NSR SV Comments).

¹³² See Petitioners SC Comments at Attachment 1, pages 2-3.

¹³³ *Id.* at Attachment 1, page 9-11.

¹³⁴ See Join's Letter, "Response to Request for Surrogate Country and Surrogate Value Information" dated April 14, 2017 (Join SC Submission); see also Yudi's Letter, "Fresh Garlic from the People's Republic of China – Surrogate Country Comments and Surrogate Values for the Preliminary Results" dated April 14, 2017. (Yudi SC Submission).

¹³⁵ See e.g., Yudi SC Submission at 1-2.

On May 12, 2017, Harmoni and Zhengyang each submitted timely comments on the selection of the primary surrogate country.¹³⁶ These companies argue that the Department should select Mexico as the primary surrogate country.¹³⁷ In addition, Harmoni also argues that the Department should select India as a secondary surrogate country to apply Indian surrogate values (SVs) to value FOPs for which Mexican data is not specific.¹³⁸

On April 28, 2017, Yudi submitted comments to rebut petitioners' surrogate country comments.¹³⁹ On May 19, 2017, Zhengyang timely filed rebuttal comments.¹⁴⁰ In these submissions, Yudi and Zhengyang argued that Romania is not a significant producer of garlic and that Romanian garlic is not comparable with Chinese garlic because of its bulb sizes, production, and quality.¹⁴¹

On April 28, 2017, the petitioners rebutted Join and Yudi's surrogate country comments.¹⁴² On May 19, 2017, the petitioners rebutted Zhengyang's and Harmoni's surrogate country comments. In these submissions, the petitioners argue that neither Mexico or India should be selected.¹⁴³ The petitioners argue that Mexico's input garlic bulbs are smaller than those used by the Chinese producers in this review, and that various market influences distort its price.¹⁴⁴ The petitioners then argue that India is not economically comparable to the PRC, and that the vast majority of garlic produced in India is not comparable to the input garlic bulbs consumed by the respondents in PRC.¹⁴⁵

¹³⁶ See Harmoni's Letter, "Zhengzhou Harmoni's Surrogate Country and Surrogate Value Comments: 22nd Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China" dated May 12, 2017 (Harmoni SC Comments) at 3-4; see also Zhengyang Letter, "Fresh Garlic from the People's Republic of China – Surrogate Country Comments and Surrogate Values for the Preliminary Results" dated May 12, 2017 (Zhengyang SC Comments) at 1-2.

¹³⁷ See Zhengyang SC Comments at 2; see also Harmoni SC Comments at 2.

¹³⁸ See Harmoni SC Comments at 3.

¹³⁹ See Yudi's Letter, "Fresh Garlic from the People's Republic of China – Rebuttal Surrogate Country Comments and Surrogate Values for the Preliminary Results" dated April 28, 2017. (Yudi Rebuttal SC Comments).

¹⁴⁰ See Zhengyang's Letter, "Fresh Garlic from the People's Republic of China – Rebuttal Surrogate Country Comments and Surrogate Values" dated May 19, 2017 (Zhengyang Rebuttal SC Comments); see also Petitioners' Letter, "22nd Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – Petitioners' Surrogate Country and Surrogate Value Rebuttal Comments" dated May 19, 2017 (Petitioners Rebuttal SC Comments).

¹⁴¹ See Yudi Rebuttal SC Comments at 1-2 and Zhengyang Rebuttal SC Comments at 1-2.

¹⁴² See Petitioners' Letter, "24th New Shipper Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – Petitioners' Surrogate Country and Surrogate Value Rebuttal Comments" dated April 28, 2017 (Petitioners NSR Rebuttal SC Comments).

¹⁴³ See Petitioners' Letter, "22nd Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – Petitioners' Surrogate Country and Surrogate Value Rebuttal Comments" dated May 19, 2017 (Petitioners Rebuttal SC Comments).

¹⁴⁴ *Id.* at 8-20.

¹⁴⁵ *Id.* at 4.

2. Surrogate Value Comments and Rebuttal Comments for the Administrative Review and New Shipper Reviews

The petitioners submitted garlic bulb data sourced from the National Institute of Statistics of Romania (NISR) and the 2015 financial statements from SC Boromir PROD S.A. (SC Boromir), a Romanian food company, to both records.¹⁴⁶

Yudi and Zhengyang submitted the 2015 publicly-available financial statements of GIMSA, a Mexican producer of comparable merchandise to both records.¹⁴⁷ Yudi and Zhengyang also submitted garlic bulb data from the Mexican government's Agricultural Food and Fishing Information Service (SIAP) for 2012-2015.¹⁴⁸

Harmoni submitted garlic bulb data sourced from SIAP for 2015 and 2016, and the publicly-available 2014 financial statement from MINSA, a Mexican producer of comparable merchandise.¹⁴⁹ Join submitted information to value the other factors of production, namely water, electricity, and labor.¹⁵⁰

In April and May of 2017, Yudi and Zhengyang each submitted rebuttal comments on interested parties' surrogate country and surrogate value submissions.¹⁵¹ In these submissions, Yudi and Zhengyang argued against using Romanian SV data sources.¹⁵² In addition, Yudi and Zhengyang argued that SC Boromir did not have comparable production for surrogate valuation.¹⁵³

In May 2017, the petitioners submitted rebuttal comments on interested parties' surrogate country and surrogate value submissions.¹⁵⁴ Conversely, the petitioners argued that the Mexican garlic pricing data are limited in availability,¹⁵⁵ and that Mexican and Indian garlic bulbs are not physically comparable to those used by the respondents in this instant review.¹⁵⁶

On November 8, 2017, the petitioners provided additional information and comments on the selection of surrogate values.¹⁵⁷ The petitioners submitted revised surrogate value data for

¹⁴⁶ See Petitioners NSR SC Comments at Exhibit 6; *see also* Petitioners SC Comments at Attachment 2, Exhibit 6.

¹⁴⁷ See Zhengyang SC Comments at Exhibit SV-13; *see also* Yudi SC Submission at Exhibit SV-13.

¹⁴⁸ See Zhengyang SC Comments at Exhibit SV-4; *see also* Yudi SC Submission at Exhibit SV-4.

¹⁴⁹ See Harmoni SC Comments at exhibits 3A-D and Exhibits 9A-C.

¹⁵⁰ See Join SC Submission.

¹⁵¹ See Zhengyang Rebuttal SC Comments; *see also* Yudi Rebuttal SC Comments.

¹⁵² *Id.* at Exhibits 2-4.

¹⁵³ *Id.* at Exhibit 14.

¹⁵⁴ See Petitioners Rebuttal SC Comments.

¹⁵⁵ *Id.* at 2 and Attachments Mex-4.

¹⁵⁶ *Id.* at 2-4 and Attachment INDIA-1.

¹⁵⁷ See Petitioners' Letter, "22nd Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – Petitioners' Final Affirmative Surrogate Value Submission" dated November 8, 2017. (Petitioners Final SV Submission); *see also* Petitioners' Letter: "24th New Shipper Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – Petitioners' Final Affirmative Surrogate Value Submission" dated October 31, 2017 (Petitioners Final NSR SV Submission).

factors not covered in their original submission.¹⁵⁸ The petitioners also submitted the 2016 financial statements from SC Boromir.¹⁵⁹ The petitioners' submission also contains POR-specific farm gate prices for fresh garlic in Mexico, along with a declaration from a partner in a Mexican garlic business.¹⁶⁰ Finally, the petitioners' submission contains information relating to certification requirements for garlic imported into Mexico, Global Trade Atlas (GTA) garlic import and export statistics for Argentina, Chile, China, Mexico, Peru, and the United States, updated population data for Argentina, Chile, Mexico, and Peru, and the public versions of the Department's verification reports from the 17th and 18th administrative reviews.¹⁶¹

On November 13 and 20, 2017, Yudi and Zhengyang submitted final surrogate value comments.¹⁶² On November 22, 2017, the petitioners filed pre-preliminary comments regarding surrogate values.¹⁶³ The Department was unable to timely analyze the comments before the preliminary results, and therefore, they will be analyzed and addressed in the final results.

Surrogate Country Analysis for the Administrative Review and New Shipper Reviews

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production, valued in a surrogate ME country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.¹⁶⁴ Reading sections 773(c)(1) and (c)(4) of the Act in concert, it is the Department's practice to select an appropriate surrogate country based on the availability and reliability of data.¹⁶⁵ The Department has identified Brazil, Mexico, Romania, Bulgaria, South Africa, and Thailand, as countries with per capita GNI that are at the same level of economic development as the PRC.¹⁶⁶

A. Economic Comparability

Section 773(c)(4)(A) of the Act is silent with respect to how the Department may determine that a country is economically comparable to the NME country. As such, the Department's longstanding practice has been first to identify those countries which are at the same level of

¹⁵⁸ See Petitioners Final SV Submission; see also Petitioners Final NSR SV Submission.

¹⁵⁹ See Petitioners Final SV Submission at Attachment SV-Supp-2; see also Petitioners Final NSR SV Submission at Attachment SV-Supp-1.

¹⁶⁰ See Petitioners Final SV Submission at Attachment SV-Supp-3; see also Petitioners Final NSR SV Submission at Attachment SV-Supp-3.

¹⁶¹ See Petitioners Final SV Submission and Petitioners Final NSR SV Submission at Attachments SV-Supp-3, SV-Supp-4, SV-Supp-5, SV-Supp-6A, SV-Supp-6B, and SV-Supp-7.

¹⁶² See Yudi's Letter, "Fresh Garlic from the People's Republic of China – Rebuttal Surrogate Value Submission" dated November 13, 2017; see also Zhengyang's Letter, "Fresh Garlic from the People's Republic of China – Final Surrogate Value Submission" dated November 20, 2017.

¹⁶³ See Petitioners' Pre-Preliminary Comments.

¹⁶⁴ See Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004).

¹⁶⁵ *Id.*

¹⁶⁶ See OP Memorandum.

economic development as the PRC based on per capita GNI data reported in the World Bank's World Development Report.¹⁶⁷ We note that identifying potential surrogate countries based on GNI data has been affirmed by the CIT.¹⁶⁸

As explained in the Department's *Policy Bulletin*, “{t}he surrogate countries on the list are not ranked.”¹⁶⁹ This absence of ranking reflects the Department's long-standing practice that for the purpose of surrogate country selection, the countries on the list “should be considered equivalent”¹⁷⁰ from the standpoint of their level of economic development based on GNI as compared to the PRC's level of economic development and recognition of the fact that the concept of “level” in an economic development context necessarily implies a range of GNIs, not a specific GNI. This long-standing practice of providing a non-exhaustive list of countries at the same level of economic development as the NME country fulfills the statutory requirement to value FOPs using data from “one or more market economy countries that are at a level of economic development comparable to that of the nonmarket economy country.”¹⁷¹ In this regard, “countries that are at a level of economic development comparable to that of the nonmarket economy country” necessarily include countries that are at the same level of economic development as the NME country.

As discussed above, the Department considers that Mexico, Romania, Bulgaria, South Africa, Brazil, and Thailand are at the same level as the PRC in terms of economic development.¹⁷² We consider all six countries identified on the Surrogate Country List as having met this prong of the surrogate country selection criteria.

Countries on the segment record that are at the same level of economic development as the PRC are given equal consideration for the purposes of selecting a surrogate country. As a general rule, the Department selects a surrogate country that is at the same level of economic development as the NME unless it is determined that none of the countries are viable options because they: (a) are not significant producers of comparable merchandise, (b) do not provide sufficient reliable sources of publicly available SV data, or are not suitable for use based on other reasons. Surrogate countries that are not at the same level of economic development as the NME country are selected only to the extent that these two considerations outweigh the difference in levels of economic development.¹⁷³

¹⁶⁷ See, e.g., *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2011-2012*, 79 FR 19053 at Comment I.a.

¹⁶⁸ See *Fujian Lianfu Forestry Co., Ltd. v. United States*, 638 F. Supp. 2d 1325 (CIT 2009).

¹⁶⁹ See *Policy Bulletin*.

¹⁷⁰ *Id.*

¹⁷¹ See section 773(c)(4) of the Act.

¹⁷² See OP Memorandum.

¹⁷³ See e.g., *Certain Cased Pencils from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent Not To Revoke Order In Part; 2010-2011*, 78 FR 2363 (January 11, 2013) and accompanying Preliminary Decision Memorandum at 6, unchanged in *Certain Cased Pencils from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Determination To Revoke Order In Part; 2010-2011*, 78 FR 42932 (July 18, 2013).

B. Significant Producers of Comparable Merchandise

Section 773(c)(4)(B) of the Act requires the Department to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor the Department's regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, the Department looks to other sources such as the *Policy Bulletin* for guidance on defining comparable merchandise. The *Policy Bulletin* states that "in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise."¹⁷⁴ Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country.¹⁷⁵ Further, when selecting a surrogate country, the statute requires the Department to consider the comparability of the merchandise, not the comparability of the industry.¹⁷⁶ "In cases where the identical merchandise is not produced, the Department must determine if other merchandise that is comparable is produced. How the Department does this depends on the subject merchandise."¹⁷⁷ In this regard, the Department recognizes that any analysis of comparable merchandise must be done on a case-by-case basis:

In other cases, however, where there are major inputs, *i.e.*, inputs that are specialized or dedicated or used intensively, in the production of the subject merchandise, *e.g.*, processed agricultural, aquatic and mineral products, comparable merchandise should be identified narrowly, on the basis of a comparison of the major inputs, including energy, where appropriate.¹⁷⁸

Further, the statute grants the Department discretion to examine various data sources for determining the best available information.¹⁷⁹ Moreover, while the legislative history provides that the term "significant producer" includes any country that is a "significant net exporter,"¹⁸⁰ it does not preclude reliance on additional or alternative metrics.

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

¹⁷⁴ See *Policy Bulletin* at 2.

¹⁷⁵ The *Policy Bulletin* also states that "if considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise." *Id.* at note 6.

¹⁷⁶ See *Sebacic Acid from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 65674, 65676 (December 15, 1997) ("To impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute.").

¹⁷⁷ See *Policy Bulletin* at 2.

¹⁷⁸ *Id.* at 3.

¹⁷⁹ See section 773(c) of the Act; see also *Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1990).

¹⁸⁰ See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988).

As noted below, there are no SV data or surrogate financial statements for Bulgaria, South Africa, Thailand, or Brazil on the record of this review. Therefore, it is unnecessary to determine whether these countries are significant producers of comparable merchandise since they cannot be considered for primary surrogate country selection purposes. Thus, the Department is left to consider whether Mexico and Romania are significant producers of comparable merchandise. Yudi, Zhengyang, and the petitioners provided 2014 FAO garlic production data, which included Romania and Mexico.¹⁸¹ Harmoni provided 2016 UN Comtrade import and export data which included Romania, Mexico, and India.¹⁸² Harmoni also claims to have provided Mexican SIAP data showing the 2015 and 2016 production quantity of garlic in Mexico.¹⁸³

| Economically-Comparable Countries | Garlic Production (MTs) |
|--|--------------------------------|
| Romania | 62,773 ¹⁸⁴ |
| Mexico | 54,724 ¹⁸⁵ |

As stated in the prior administrative review, we note that the PRC’s production level of fresh garlic is by far the largest in the world – approximately 80 percent of world production which represents a production level over 15 times greater than the next largest producing country.¹⁸⁶ 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,¹⁸⁷ 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 from the underlying purpose of section 773(c)(4) of the Act to identify reliable market-based prices upon which to value a NME producer’s factors of production.

China’s production level is not relevant to judging the significance of the potential SC’s production of comparable merchandise. Policy Bulletin 04.1 provides that “the extent to which a country is a significant producer should not be judged against the NME country’s production level.”

Here, Romania’s and Mexico’s 2014 production amounts are so noticeably and measurably large –62,773 and 54,724 metric tons, respectively, that it is reasonable to conclude the quantity reflects an adequate number of garlic producers that are commercially viable, and therefore provide data reflecting market-based transactions. We note that while Harmoni argued that

¹⁸¹ See Yudi SC Comments at Exhibit SV-15; *see also* Zhengyang SC Comments at Exhibit SV-15; *see also* Petitioners SC Comments at Attachment 1, Exhibit FAO-1; *see also* Yudi SV Submission at Exhibit SV-4.

¹⁸² See Harmoni SC Comments at 9-10 and Exhibit 11.

¹⁸³ *Id.* at Exhibit 3A.

¹⁸⁴ See Petitioners SC Comments at Attachment 1, Exhibit FAO-1. *See also* Petitioners NSR SC Comments at Exhibit FAO-1.

¹⁸⁵ To remain consistent, we have used Mexico’s 2014 production volume as reported by Yudi and Zhengyang.

¹⁸⁶ See *Garlic 21 Final*.

¹⁸⁷ 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.”

Mexico constitutes a significant producer of comparable merchandise, it has not offered any meaningful distinction between the significance of Romanian and Mexican 2014 production levels. We further note that Yudi and Zhengyang have argued that since Romania is not a net exporter of garlic, it cannot be considered a significant producer.¹⁸⁸ The Department noted in the previous administrative review 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.”¹⁸⁹ Moreover, the UN Comtrade import and export data submitted by Harmoni on the record of the Administrative review shows that Mexico only exported around 55 metric tons (net).¹⁹⁰

Thus, the 2014 FAO data demonstrates that Romania and Mexico are significant producers of identical merchandise in that each country produces a “noticeably or measurable large amount” of fresh garlic.

C. Data Availability

The *Policy Bulletin* states that, if more than one country meets the economic comparability and significant producer of comparable merchandise criteria, “then the country with the best factors data is selected as the primary surrogate country.”¹⁹¹ Section 773(c)(1) of the Act instructs the Department to value the FOPs based upon the best available information from an ME country or countries that the Department consider appropriate. When evaluating the best available information, the Department considers several factors including whether the SV is publicly available, contemporaneous with the POR, represents a broad-market average, tax and duty-exclusive, and specific to the input.¹⁹² There is no hierarchy among these criteria.¹⁹³ It is the Department’s practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis.¹⁹⁴

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

¹⁸⁸ See e.g., Yudi Rebuttal SC Comments at 1.

¹⁸⁹ See *Garlic 21 Final*, IDM at 48.

¹⁹⁰ See Harmoni SC Comments at 9 and Exhibit 11.

¹⁹¹ See *Policy Bulletin*.

¹⁹² See, e.g., *Utility Scale Wind Towers from the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value*, 77 FR 75984 (December 26, 2012) and accompanying Issues and Decision Memorandum at Comment 1.

¹⁹³ See, e.g., *Certain Preserved Mushrooms from the People’s Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006) and accompanying Issues and Decision Memorandum at Comment 1.

¹⁹⁴ See *Policy Bulletin*.

1. Romania

The petitioners argue Romania is the source of the best available information to value respondents' factors of production because the fresh garlic grown is physically comparable to PRC garlic and the price data is reliable.¹⁹⁵

The petitioners contend that the Romanian garlic bulbs are physically comparable to garlic bulbs exported by respondents in the instant review.¹⁹⁶ The petitioners note that in previous AD determinations of garlic from the PRC, the Department established that diameter of garlic grown in PRC "typically ranges between 40-60mm."¹⁹⁷ The petitioners explain that "{t}he three main fall-planted varieties of garlic grown in Romania yield bulbs that are medium to large in size, with per-bulb weights ranging from 40-60 grams, 25-35 grams, and 40-50 grams.... Public information provided by Chinese exporters reflects that, in general, the relationship between weight and size is 1 mm bulb diameter for each 1 gram of fresh garlic bulb (e.g., a 250-gram bag of fresh garlic contains 4 bulbs of 60 mm diameter weighing about 62 grams each (250/4 grams bulbs = 62.5 grams per bulb))."¹⁹⁸

The petitioners further argue that the different varieties of Romanian garlic have physical characteristics that correspond closely with the range of garlic bulb sizes grown in the PRC by drawing parallels between the moderate, large-sized, and very large-sized varieties available in the two garlic markets.¹⁹⁹ The petitioners cite a completed new shipper review on the garlic AD order where the Department determined that "the petitioners have provided sufficient evidence to establish that the garlic produced in Romania is comparable to the sizes of garlic bulbs produced in the PRC."²⁰⁰

Regarding the reliability of the Romanian data, the petitioners contend that Romania has the highest quality data for garlic bulbs, provided by the Romanian government, specifically the National Institute of Statistics of Romania (NISR).²⁰¹ The petitioners assert that the garlic bulb data on the record for Romania is contemporaneous, tax-free, monthly, and publicly-available.²⁰²

¹⁹⁵ See Petitioners SC Comments at Attachment 1, page 3; *see also* Petitioners NSR SC Comments at 3.

¹⁹⁶ See Petitioners SC Comments at Attachment 1, page 7; *see also* Petitioners NSR SC Comments at 7.

¹⁹⁷ See Petitioners SC Comments at Attachment 1, page 3 (*citing Fresh Garlic from the People's Republic of China: Issues and Decisions Memorandum for the Final Results of the 13th Antidumping Duty Administrative and New Shipper Reviews and Rescission, In Part, the Antidumping Duty Administrative and New Shipper Reviews*, at 7 (June 8, 2009)); *see also* Petitioners NSR SC Comments at 3 (*citing Fresh Garlic from the People's Republic of China: Issues and Decisions Memorandum for the Final Results of the 13th Antidumping Duty Administrative and New Shipper Reviews and Rescission, In Part, the Antidumping Duty Administrative and New Shipper Reviews*, at 7 (June 8, 2009)).

¹⁹⁸ See Petitioners SC Comments at Attachment 1, page 4 and Exhibit PRC-1; *see also* Petitioners NSR SC Comments at 4 and Exhibit PRC-1.

¹⁹⁹ See Petitioners SC Comments at Attachment 1, pages 6-7; *see also* Petitioners NSR SC Comments at 6-7.

²⁰⁰ See *Fresh Garlic from the People's Republic of China: Final Results of the Semiannual Antidumping Duty New Shipper Review of Jinxiang Merry Vegetable Co., Ltd and Cangshan Qingshui Vegetable Foods Co., Ltd; 2012-2013*, 78 FR 62103 (October 16, 2014) and accompanying Issues and Decisions Memorandum at 5-6 (NSR 21 IDM), cited in Petitioners SC Comments at Attachment 1, page 8.

²⁰¹ See Petitioners SC Comments at Attachment 1, page 10; *see also* Petitioners NSR SC Comments at 10.

²⁰² *Id.*

In addition, the petitioners explain that their comparison of the 2014 garlic bulb prices for Romania, which are separately published by NISR and FAO, show that the price data are identical, indicating that FAO data are based on NISR data.²⁰³

The petitioners note that the Department has previously determined that the NISR data were: (1) specific; (2) based on a broad market average; (3) contemporaneous; (4) exclusive of taxes and duties; and (5) publicly available.²⁰⁴ The petitioners argue that with updated NISR data to align with the POR for the instant review, the NISR data still meet these criteria.

In a preceding administrative review farm gate pricing was defined as garlic that “is priced to reflect its state immediately following the harvest,” and the petitioners argue the input garlic bulbs used by the respondent are not “farm gate,” but instead reflect “significant post-harvest processing and handling.”²⁰⁵ The petitioners additionally provide a description of the Romanian garlic bulb data that states that NISR prices “reflect the first marketing stage, they do not include transport or storage costs etc.” to demonstrate the similarity between the Romanian and Chinese garlic input bulbs.²⁰⁶

Both Yudi and Zhengyang note that the Romanian garlic bulb data are not farm gate prices.²⁰⁷ Yudi and Zhengyang’s submission of rebuttal information attempts to demonstrate that the European Union-imposed tariffs on imported garlic have distorted garlic prices in the Romanian market.²⁰⁸

2. Mexico

Yudi, Harmoni, and Zhengyang argue that Mexico’s fresh garlic is physically comparable to Chinese garlic bulbs, and that Mexican price data is reliable.²⁰⁹ Harmoni, Yudi and Zhengyang supported these claims with various academic articles that appear to discuss scientific research on different cultivation techniques for garlic, rather than the general physical or cultivation characteristics of Mexican garlic.²¹⁰

²⁰³ See Petitioners SC Comments at Attachment 1, page 10 and Exhibits ROM-4 and ROM-5; see also Petitioners NSR SC Comments at 10 and Exhibits ROM-4 and ROM-5.

²⁰⁴ See Petitioners SC Comments at Attachment 2, page 3-5; see also Petitioners NSR SV Comment at 3-5.

²⁰⁵ See *Fresh Garlic from the People’s Republic of China: Final Results of the 2009-2010 Administrative Review of the Antidumping Duty Order*, 77 FR 34346 (June 11, 2012) and the accompanying Issues and Decisions Memorandum at 19, (cited by Petitioners NSR SV Comments at 4-5 and Petitioners SC Comments at Attachment 2, pages 4-5).

²⁰⁶ See Petitioners SC Comments at Attachment 2, Exhibit 1A; see also Petitioners NSR SV Comments at Exhibit 1A.

²⁰⁷ See Yudi Rebuttal SC Comments at 2 and Exhibit SV2-11; see also Zhengyang Rebuttal SC Comments at 2 and Exhibit SV2-11.

²⁰⁸ See Yudi Rebuttal SC Comments at Exhibits SV2-5, SV2-6, and SV2-15; see also Zhengyang Rebuttal SC Comments at SV2-5, SV2-6, and SV2-15.

²⁰⁹ See Zhengyang’s SC Comments at 2; see also Yudi SC Comments at 2; see also Harmoni SC Comments at 3.

²¹⁰ See *i.e.* Harmoni SC Comments at Exhibit 4 A-J; see also Yudi SC Comments at Exhibit SV-6; and see Zhengyang SC Comments at Exhibit SV-6. We note that some of the articles are illegibly translated.

In response, the petitioners provide articles in Spanish (with English translations) and in English as well as a declaration from the owner of a Mexican garlic company.²¹¹ By comparing imported Chilean garlic prices to the export price of Mexican garlic, the petitioners contend that there is a connection between the international demand for Mexican garlic and the size of the garlic bulb.²¹² Additionally, the petitioners argue that Mexico's national climate is very different from that of the PRC's main garlic growing regions, and that Romania, in contrast, shares four of its five major sub-climatic zones under the same Köppen designations of the Chinese growing regions.²¹³ The petitioners also provide evidence of market conditions which may have influenced the price of the Mexican garlic during the POR.²¹⁴

Regarding the reliability of the data, Join, Yudi, Harmoni and Zhengyang all assert that the Mexican data are reliable.²¹⁵ In order to argue the reliability of the Mexican garlic bulb data, Harmoni, Yudi, and Zhengyang submitted FAO data to correlate with the SIAP data.²¹⁶

The petitioners argue that Mexico's garlic bulb data are not the most reliable on the records of these reviews because certain Mexican pricing data are limited in availability.²¹⁷

Surrogate Country Selection

The garlic bulb is the single most important SV used to calculate normal value in this administrative review. As an initial matter, the Department has repeatedly determined that size and quality are the most important characteristics of fresh garlic exported from the PRC to the United States, because the price of the bulb varies with its size and quality.²¹⁸ Information on the records of these reviews indicates that the diameter of garlic bulbs produced in Romania is physically similar to the diameter of the bulbs grown in the PRC and sold in the United States.²¹⁹ In a recently concluded new shipper review, the Department determined that there was "sufficient evidence to establish that the garlic produced in Romania is comparable to the sizes of garlic bulbs produced in the PRC."²²⁰ Moreover, in the previous administrative review, the Department found that Romanian garlic bulbs are "similar in size to the input garlic bulbs consumed in the production of subject merchandise."²²¹ By contrast, there is not substantial record evidence to conclude that Mexico's garlic bulbs are identical or more comparable to the

²¹¹ See Petitioners Final SV Submission at Attachment SV-Supp-3.

²¹² See Petitioners Rebuttal SC Comments at Attachments TRADE1-TRADE6.

²¹³ *Id.* at Attachments CLIMATE1-CLIMATE7.

²¹⁴ *Id.* at Attachments MEX 1-3 and FP-1 to FP-5; see also Petitioners Final SV Submission at Attachments SV-Supp-4 and SV-Supp-5.

²¹⁵ See Join SC Comments at 2; see also Yudi SC Comments at 2; see also Zhengyang SC Comments at 2; see also Harmoni SC Comments at 10.

²¹⁶ See Harmoni SC Comments at Exhibit 3C; see also Yudi SC Comments at Exhibit SV-5; see also Zhengyang SC Comments at Exhibit SV-5.

²¹⁷ See Petitioners Rebuttal SC Comments at 2 and Attachment MEX-4; see also Petitioners NSR Rebuttal SC Comments at 2 and Attachment MEX-4.

²¹⁸ See, e.g., *Garlic 2009-2010 AR Final Results* IDM at 17.

²¹⁹ See Petitioners SC Comments at Attachment 1, pages 4-7 and Exhibits ROM-1A, ROM-2, PRC-1, and PRC-2; see also Petitioners NSR SC Comments at 4-7 and Exhibits ROM-1A, ROM-2, PRC-1 and PRC-2.

²²⁰ See NSR19 IDM, cited by Petitioners SC Comments at 8.

²²¹ See *Garlic 21 Final*, IDM at 46-47.

garlic bulbs from the PRC. In contrast, the SV information on the record for Romania has been determined to be (1) specific; (2) based on a broad market average; (3) contemporaneous; (4) exclusive of taxes and duties; and (5) publicly available.²²²

Finally, consistent with past practice, we find that the mere existence of tariffs and quotas on imports of a product cannot be presumed to have an effect on prices of domestic production, unless there is information on the record suggesting an effect.²²³ There is no information on the record to support those claims that EU-imposed tariffs and quotas on imported Chinese garlic have distorted garlic prices in the Romanian market. We find no evidence that the Government of Romania undertook steps to interfere or to distort garlic prices during the POR.

Therefore, the Department preliminarily finds Romania to be the primary surrogate country for this review, because Romania: (1) is at a comparable level of economic development to the PRC; (2) is a significant producer of comparable merchandise that is physically similar to the garlic produced in China; and (3) provides sufficient reliable sources of data from which to derive SVs. Finally, there is publicly available data from Romania for all FOPs on the record of this review. The Department therefore preliminarily selects Romania as the primary surrogate country for this review. A detailed explanation of the SVs used is provided below in the “Normal Value” section of this notice.

As discussed above, Harmoni argued that the Department should consider using India as a secondary surrogate country in the administrative review. As an initial matter, there is no SV information from India on the record of the administrative review. Moreover, as noted above, the Department only departs from the countries on the OP list if we find that none of the countries on the list are significant producers of identical or comparable merchandise, or there are issues regarding the availability of SVs from the countries on the list. As discussed above, we have determined that at least two countries identified on the Surrogate Country List are significant producers of identical or comparable merchandise, and that Romania provides sufficient and reliable sources of data from which to derive SVs. Therefore, because a country on the Surrogate Country List satisfies all of the criteria of our surrogate country selection methodology, we have not considered using India as a surrogate country in the administrative review, and have not considered the potential SV information from that country.

Date of Sale

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

In identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer’s records kept in the ordinary course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied

²²² *Id.* at 12.

²²³ See *Fresh Garlic from the People’s Republic of China: Final Results of the Semiannual Antidumping Duty New Shipper Review of Jinxiang Merry Vegetable Co., Ltd. and Cangshan Qingshui Vegetable Foods Co., Ltd.; 2012–2013*, 79 FR 62103 (October 16, 2014) and accompanying Issues and Decision Memorandum at Comment 1.

that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.²²⁴

Information on the record of this review indicates that Zhengyang, Yudi, and Join set the material terms of sale on invoice date and reported invoice date as date of sale.²²⁵

Comparisons to Normal Value

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

A. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average normal values to weighted-average export prices (or constructed export prices) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, the Department examines whether to compare weighted-average normal values with the export prices (or constructed export prices of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of administrative reviews, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) (2012) in administrative reviews is, in fact, analogous to the issue in less-than-fair-value investigations.²²⁶ In recent investigations, the Department applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.²²⁷ The Department finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the

²²⁴ See 19 CFR 351.401(i); see also *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10; *Allied Tube and Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-1092 (CIT 2001) (upholding the Department's rebuttable presumption that invoice date is the appropriate date of sale).

²²⁵ See Zhengyang April 21, 2017 CDQR at C-9-C-10; see also Yudi February 28, 2017 CDQR at C-8-C-9; see also Join February 28, 2017 CDQR at C-7

²²⁶ See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012).

²²⁷ See, e.g., *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); see also *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); see also *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

potential masking of dumping that can occur when the Department uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

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

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

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

Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

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

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

B. Results of the Differential Pricing Analysis

For Zhengyang, based on the results of the differential pricing analysis, the Department preliminarily finds that 95.6 percent of the value of U.S. sales passes the Cohen's *d* test.²²⁸ There is no difference between the weighted-average margin using the average-to-average method compared to the average-to-transaction method. Accordingly, the Department preliminarily determines to apply the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Zhengyang.

For Yudi and Join, based on the results of the differential pricing analysis, the Department preliminarily finds that 0 percent of the value of U.S. sales passes the Cohen's *d* test.²²⁹

²²⁸ See Memorandum, "Administrative Review of Fresh Garlic from the People's Republic of China: Calculation Memorandum for the Preliminary Results of Zhengyang" dated concurrently with this memorandum (Zhengyang Preliminary Analysis Memorandum).

²²⁹ See Memorandum, "New Shipper Review of Fresh Garlic from the People's Republic of China: Calculation Memorandum for the Preliminary Results of Yudi" dated concurrently with this memorandum (Yudi Preliminary Analysis Memorandum); *see also* Memorandum, "New Shipper Review of Fresh Garlic from the People's Republic of China: Calculation Memorandum for the Preliminary Results of Join" dated concurrently with this memorandum (Join Preliminary Analysis Memorandum).

Accordingly, the Department preliminarily determines to apply the average-to-average method for all U.S. sales to calculate the weighted-average dumping margins for Yudi and Join.

Export Price

Pursuant to section 772(a) of the Act, the EP is “the price at which subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States,” as adjusted under section 772(c) of the Act.

The Department considers the U.S. prices of all sales by Zhengyang to be export price (EP) in accordance with section 772(a) of the Act because they were the prices at which the subject merchandise was first sold before the date of importation by the exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the U.S. We calculated EPs based on the sales price to unaffiliated purchaser(s) in the U.S.

The details of Zhengyang’s and Yudi’s sales terms are business proprietary information (BPI).²³⁰ In accordance with section 772(c)(2)(A) of the Act, where appropriate, we made deductions from the sales price for various expenses that were provided in the PRC and paid for in an NME currency, such as foreign inland freight, brokerage and handling. For those expenses that were provided by an ME provider and paid for in an ME currency, the Department used the reported expense. For a detailed description of Zhengyang and Yudi’s preliminary calculations, *see* Zhengyang’s and Yudi’s Preliminary Analysis Memoranda.²³¹

Constructed Export Price

In accordance with section 772(b) of the Act, CEP is “the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d).” Join reported that during the POR, it made CEP sales through its U.S. affiliate.²³²

In accordance with section 772(b) of the Act, we calculated CEP for Join by deducting from the reported gross unit sales prices discounts and rebates, movement expenses, where applicable, in accordance with section 772(c)(2)(A) of the Act, direct and indirect selling expenses, credit expenses, and inventory carrying costs, all of which relate to commercial activity in the United States, in accordance with section 772(d)(1) of the Act, and CEP profit, in accordance with sections 772(d)(3) and 772(f) of the Act. For a detailed description of Join’s preliminary calculations, *see* Join’s Preliminary Analysis Memorandum.²³³

²³⁰ *See* Zhengyang April 21, 2017 CDQR; *see also* Yudi’s February 28, 2017 CDQR.

²³¹ *See* Zhengyang Preliminary Analysis Memorandum; *ee also* Yudi Preliminary Analysis Memorandum.

²³² *See* Join February 9, 2017 CQR at C-6.

²³³ *See* Join’s Preliminary Analysis Memorandum.

Value-Added Tax

In 2012, the Department announced a change of methodology with respect to the calculation of EP and CEP to include an adjustment of any un-refunded (herein “irrecoverable”) value-added tax (“VAT”) in certain NMEs in accordance with section 772(c)(2)(B) of the Act.²³⁴ The Department explained that when an NME government imposes an export tax, duty, or other charge on subject merchandise, or on inputs used to produce subject merchandise, from which the respondent was not exempted, the Department will reduce the respondent’s EP and CEP prices accordingly, by the amount of the tax, duty or charge paid, but not rebated.²³⁵ Where the irrecoverable VAT is a fixed percentage of EP or CEP, the Department explained that the final step in arriving at a tax neutral dumping comparison is to reduce the U.S. EP or CEP downward by this same percentage.²³⁶

The Chinese VAT schedule placed on the record of this review by Zhengyang indicates that the standard VAT levy is zero percent, and the rebate rate for subject merchandise is zero percent.²³⁷ For the purposes of these preliminary results, therefore, we did not deduct irrecoverable VAT from U.S. price.²³⁸

Normal Value

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

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

²³⁴ See *Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481 (June 19, 2012).

²³⁵ *Id.*; see also *Chlorinated Isocyanurates from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 4875 (January 30, 2014) and accompanying Issues and Decision Memorandum at Comment 5.A.

²³⁶ *Id.*

²³⁷ See Zhengyang April 21, 2017 CDQR at Appendix C-7.

²³⁸ *Id.*

and (4) representative capital costs. The Department based NV on Zhengyang's reported FOPs for materials, energy, and labor.

Factor Valuations

In accordance with section 773(c) of the Act, for subject merchandise produced by the respondents, the Department calculated NVs based on the FOPs reported by the respondents for the POR. The Department used Romanian import data and other publicly available Romanian data in order to calculate SVs for each respondent's FOPs. To calculate NVs, the Department multiplied each respondent's reported per-unit FOP quantities by publicly available SVs.²³⁹ The Department's practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, SVs which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties.²⁴⁰ As appropriate, the Department adjusted input prices by including freight costs to render them delivered prices. Specifically, the Department added to Romanian import SVs, a surrogate freight cost, using the shorter of the reported distance from the domestic supplier to the factory, or the distance from the nearest seaport to the factory where it relied on an import value. This adjustment is in accordance with the decision of the Federal Circuit in *Sigma Corp.*²⁴¹ Additionally, where necessary, the Department adjusted SVs for inflation and exchange rates, and the Department converted all applicable FOPs to a per-kilogram basis.

For the preliminary results, the Department valued garlic inputs using data from the Romanian NISR. Consistent with the *Garlic 21 Final*, we determine that this data: (1) is product-specific; (2) represents a broad market average; (3) is publicly available; (4) spans the POR; and (5) is exclusive of taxes and duties.

For all other raw material and packing inputs, the Department used Romanian import prices reported in the Global Trade Atlas (GTA) published by Global Trade Information Services.²⁴² The record shows that data in the Romanian import statistics, as well as those from the other sources, are generally product-specific, representative of a broad market average, publicly available, contemporaneous with the POR, and tax- and duty-exclusive.²⁴³

²³⁹ See Memorandum, "Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Preliminary Surrogate Value Memorandum" (dated concurrently with this memorandum) (Preliminary SV Memo).

²⁴⁰ See, e.g., *Electrolytic Manganese Dioxide from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 48195 (August 18, 2008) and accompanying Issues and Decision Memorandum at Comment 2.

²⁴¹ See *Sigma Corp. v. United States*, 117 F.3d 1401, 1408 (Fed. Cir. 1997) (*Sigma Corp.*).

²⁴² <http://www.gtis.com/GTA.htm>.

²⁴³ See Petitioners SC Comments at Attachment 2, page 4; see also Petitioners NSR SV Comments at 4.

We valued electricity based on information from Eurostat’s reporting of electricity rates,²⁴⁴ and we valued water using information from the National Regulating Authority for the Public Utility Services of Romania Statistics.²⁴⁵

We valued brokerage and handling (B&H) using information in the World Bank’s *Doing Business 2015 Romania (Doing Business Romania)* report, and truck freight using information in the World Bank’s *Doing Business 2016 Romania (Doing Business Romania 16)* report. These reports covered inland transportation and handling relating to importing and exporting a standardized cargo of goods.²⁴⁶

In *Labor Methodologies*, the Department determined that the best methodology to value labor is to use industry-specific labor rates from the primary surrogate country.²⁴⁷ The Department does not, however, preclude all other sources from evaluation for use in labor costs.²⁴⁸ Rather, we continue to follow our practice of selecting the best available information to determine SVs for inputs such as labor. In this case, we valued labor using data reported by the International Labor Organization Statistics (ILOSTAT) for the manufacture of food products in Romania. The ILOSTAT data is from 2013. For this value, which was not contemporaneous with the POR, we adjusted for inflation using data published by the International Monetary Fund’s International Financial Statistics.²⁴⁹

To value factory overhead, selling, general and administrative expenses (“SG&A”), and profit, we used information from the 2015 and 2016 financial statements of SC Boromir PROD SC, a Romanian food processor.²⁵⁰ From these Romanian financial statements, we were able to determine factory overhead as a percentage of the total raw materials, labor, and energy (ML&E) costs; SG&A as a percentage of ML&E plus overhead (*i.e.*, cost of manufacture); and the profit rate as a percentage of the cost of manufacture plus SG&A.

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

²⁴⁴ See Petitioners SC Comments at Attachment 2, Exhibit 4A; *see also* Petitioners NSR SV Comments at Exhibit 4A.

²⁴⁵ See Petitioners SC Comments at Attachment 2, Exhibit 4B; *see also* Petitioners NSR SV Comments at Exhibit 4B.

²⁴⁶ See Petitioners SC Comments at Attachment 2, Exhibits 5A and B; *see also* Petitioners NSR SV Comments at Exhibits 5A and B.

²⁴⁷ See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (*Labor Methodologies*).

²⁴⁸ See *Steel Wire Garment Hangers from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012–2013*, 79 FR 65616 (November 5, 2014) and Issues and Decision Memorandum at 11.

²⁴⁹ See Preliminary SV Memo.

²⁵⁰ See Petitioners SC Comments at Attachment 2, Exhibit 6; *see also* Petitioners NSR SV Comments at Exhibit 6; *see also* Petitioners Final SV Comments at Attachment SV-Supp-2; *see also* Petitioners Final NSR SV Comments at Attachment SV-Supp-1.

Currency Conversion

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

VIII. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

Agree

Disagree

11/30/2017

X



Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary of Enforcement and Compliance