



A-570-831
New Shipper Review
11/01/2017 – 5/31/2018
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November 1, 2019

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Final Results of the Semiannual
2017-2018 Antidumping Duty New Shipper Review: Fresh Garlic
from the People's Republic of China

I. SUMMARY

The Department of Commerce (Commerce) analyzed the case and rebuttal briefs submitted by interested parties in the new shipper review (NSR) of Jinxiang Infang Fruit & Vegetable Co., Ltd. (Infang) with respect to the antidumping duty order on fresh garlic from the People's Republic of China (China). As a result of this analysis we continue to find that Infang made a sale of subject merchandise to the United States at less than normal value (NV). Accordingly, we recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

Below is a complete list of the issues in this NSR on which we received comments from interested parties:

- Comment 1: Whether Romania or Mexico Is a Significant Producer of Comparable Merchandise
- Comment 2: Whether the Garlic Market in Romania is Distorted
- Comment 3: Whether Garlic Grown in Romania or Mexico is of a Comparable Size to Garlic in China
- Comment 4: Whether Romania or Mexico Offer the Best Data

II. BACKGROUND

On June 13, 2019, Commerce published the preliminary results of the NSR of Infang.¹ The period of review (POR) is November 1, 2017 through May 31, 2018. The deadline for the final results was extended on August 29, 2019 to November 1, 2019.²

On August 23, 2019, the petitioners³ withdrew their request for verification in this proceeding.⁴ On September 19, 2019, Commerce set deadlines for the submission of case briefs and rebuttal briefs.⁵ On September 24, 2019, at the request of Infang⁶ and the petitioners,⁷ Commerce extended the deadlines for the submission of case and rebuttal briefs.⁸ Infang filed a case brief on September 30, 2019.⁹ The petitioners filed a rebuttal brief on October 7, 2019.¹⁰

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: 0703.20.0000, 0703.20.0005, 0703.20.0015, 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, 0711.90.6500, 2005.90.9500, 2005.90.9700, and 2005.99.9700 of the Harmonized Tariff Schedule of the United States (HTSUS).

¹ See *Fresh Garlic from the People's Republic of China: Preliminary Results of the Antidumping Duty New Shipper Review*, 84 FR 27585 (June 13, 2019) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM).

² See Memorandum, "Fresh Garlic from the People's Republic of China – 2017-2018 Semiannual Antidumping Duty New Shipper Review: Extension of Deadline for the Final Results of the Review," dated August 29, 2019.

³ The petitioners are the Fresh Garlic Producers Association (FGPA) and its individual members: Christopher Ranch L.L.C., the Garlic Company, and Valley Garlic.

⁴ See Petitioners' Letter, "27th New Shipper Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – Petitioners' Withdrawal of Request for Verification," dated August 23, 2019.

⁵ See Memorandum, "Semiannual New Shipper Review of Fresh Garlic from the People's Republic of China: Briefing Schedule," dated September 19, 2019.

⁶ See Infang's Letter, "Fresh Garlic from the People's Republic of China – Extension Request for Infang NSR Case Brief Schedule," dated September 23, 2019.

⁷ See Petitioners' Letter, "27th New Shipper Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – Petitioners' Request for Extension of the Briefing Schedule," dated September 23, 2019.

⁸ See Memorandum, "Semiannual New Shipper Review of Fresh Garlic from the People's Republic of China: Extension of Briefing Schedule," dated September 24, 2019.

⁹ See Infang's Letter, "Fresh Garlic from the People's Republic of China – Case Brief," dated September 30, 2019 (Infang's Case Brief).

¹⁰ See Petitioners' Letter, "Fresh Garlic from the People's Republic of China: Petitioners' Rebuttal Brief," dated October 7, 2019 (Petitioners' Rebuttal Brief).

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive. In order to be excluded from the AD 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 (CBP) to that effect.

IV. DISCUSSION OF THE ISSUES

Background: In the *Preliminary Results*, we selected Romania as the surrogate country from a list of countries at a level of economic development comparable to China including Brazil, Mexico, Romania, Malaysia, Russia, and Kazakhstan.¹¹ As part of our analysis, we determined that Romania and Mexico were significant producers of comparable merchandise.¹² We also found that there were publicly available Romanian data for all factors of production (FOP) on the record of this review.¹³ We determined that since the Mexican import statistics submitted by Infang were not translated into English, they were not usable.¹⁴ Finally, we determined that the Romanian data constituted the best available information on the record from which to value Infang's FOPs.¹⁵ Parties' comments focused on issues related to our surrogate country selection.

Comment 1: Whether Romania or Mexico Is a Significant Producer of Comparable Merchandise

Infang's Case Brief

- Commerce's policy bulletin states that "the extent to which a country is a significant producer...should be made consistent with the characteristics of world production, and trade in, comparable merchandise."¹⁶
- Commerce has therefore stated that, as a matter of policy, the "trade in" comparable merchandise is an aspect of determining which countries are significant producers. Both the Court of International Trade (CIT) and the U.S. Court of Appeals for the Federal Circuit have also found the concept of being a significant producer to indicate the country is likely to have influence on, or affect, the world market.¹⁷

¹¹ See *Preliminary Results*, and accompanying PDM at 9 (citing Commerce's Letter, "Fresh Garlic from the People's Republic of China: Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information," dated August 10, 2018).

¹² *Id.* at 10-12.

¹³ *Id.* at 15.

¹⁴ *Id.* at 12-13

¹⁵ *Id.* at 15.

¹⁶ See Infang's Case Brief at 12 (citing Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin 04.1)).

¹⁷ *Id.* at 12-13; see also *Fresh Garlic Producers Ass'n v. United States*, 2016 Ct. Int'l Trade LEXIS 66, 69 (CIT 2016); *Dupont Teijin Films v. United States*, 997 F. Supp. 2d 1338, 1342 (CIT 2014); *Shandong Rongxin Imp. & Exp. Co. v. United States*, 774 F. Supp. 2d 1307, 1316 (CIT 2011); and *China First Pencil Co. v. United States*, 466 F. App'x 881 (Fed. Cir. 2012).

- Romania is neither a net exporter nor a significant exporter of garlic. Romania’s small amount of exports of garlic cannot have an effect on the world garlic market.¹⁸
- On the other hand, Mexico has consistently exported large amounts of garlic per year. In 2017, Mexico exported over 14 million kilograms of garlic, while Romania only exported 37,674 kilograms.¹⁹
- Mexico has been the first or second largest exporter of garlic to the United States after China over the past several years. Mexico is also a more significant producer of garlic on the world market. Commerce must consider these factors along with the quality of data available in each country.²⁰

Petitioners’ Rebuttal Brief

- In terms of Commerce’s significant producer analysis, Policy Bulletin 04.1 states that the determination “should not be judged against the NME country’s production level or the comparative production of the five or six countries on {the Office of Policy’s} surrogate country list.” It goes on to state that Commerce will make its determination “consistent with the characteristics of world production of, and trade in, comparable merchandise.” Finally, it states that this standard “{varies} from case to case.”²¹
- Commerce should not consider Romania to be a significant producer. Neither the statute nor the legislative history states that a country must be a significant net exporter to be considered a significant producer.²²
- Policy Bulletin 04.1 states that a country may be considered a significant producer based on its being a net exporter only if “adequate {production} data” are not available.²³
- The statute’s plain language supports Commerce’s reliance on production data over trade data.²⁴
- The record of this review shows that garlic grown in Romania is comparable to garlic grown in China, while the record does not support a finding that the garlic grown in Mexico is comparable to garlic grown in China.²⁵

Commerce’s Position:

We continue to find that Romania and Mexico are significant producers of comparable merchandise.

¹⁸ See Infang’s Case Brief at 13-14 (citing Infang’s Letter, “Fresh Garlic from the People’s Republic of China – Rebuttal Surrogate Country Comments and Surrogate Values for the Preliminary Results,” dated October 1, 2018 (Infang’s Rebuttal Surrogate Comments) at Exhibits SV2-1 and SV2-2).

¹⁹ *Id.* at 14 (citing Infang’s Letter, “Fresh Garlic from the People’s Republic of China: Surrogate Country Comments and Surrogate Values for the Preliminary Results,” dated September 17, 2018 (Infang’s Surrogate Comments) at Exhibit SV-16).

²⁰ *Id.*

²¹ See Petitioners’ Rebuttal Brief at 4-5 (citing Policy Bulletin 04.1).

²² *Id.* at 8.

²³ *Id.* at 9 (citing Policy Bulletin 04.1).

²⁴ *Id.*; see also section 773(c)(4) of the Act.

²⁵ See Petitioners’ Rebuttal Brief at 9.

Section 773(c)(4)(B) of the Act requires Commerce, to the extent possible, to value FOPs in one or more market economy countries that are a significant producer of comparable merchandise. Neither the Act nor Commerce's regulations provide further guidance on what may be considered comparable merchandise. However, Policy Bulletin 04.1 explains that “{i}n all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise.”²⁶ The record of this review supports a determination that fresh garlic (*i.e.*, identical merchandise) is grown in both Romania and Mexico.²⁷

Infang argues that Mexico is the largest supplier of fresh garlic to the United States after China.²⁸ As we have determined in previous reviews, we again determine that this argument is not relevant.²⁹ Policy Bulletin 04.1 explains that “{t}he extent to which a country is a significant producer should not be judged against the NME country's production level or the comparative production of the five or six countries on the {Office of Policy's} surrogate country list.”³⁰ Thus, the appropriate analysis is not which surrogate country produces an amount closest to the NME country's production level. Moreover, in the present case, Commerce cannot compare potential surrogate country data to the amount of fresh garlic produced in China, because China is by far the largest producer of fresh garlic in the world – approximately 80 percent of world production, and over 15 times larger than the next largest producing country.³¹ Given this disparity, it is not useful to make a judgment, under these circumstances, about whether a surrogate country's production is comparable to the amount of production in China and “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,³² Commerce 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 surrogate values (SV) reflecting the commercial market reality of producing the subject merchandise in that country. We further note that, in *Shenzhen Xinboda*, which contained similar arguments, the CIT sustained Commerce's determination that Romania was a significant producer of comparable merchandise based on its production and irrespective of that respondent's claim that Mexico was “the largest supplier of garlic to the United States after China.”³³

Here, Romania's and Mexico's 2016 production amounts are each noticeably and measurably large – 54,389 and 75,987 metric tons,³⁴ respectively, such that it is reasonable to assume the quantity reflects an adequate number of garlic producers that are commercially viable, and

²⁶ See Policy Bulletin 04.1.

²⁷ See, e.g., Infang's Surrogate Comments at Exhibit SV-15.

²⁸ See Infang's Case Brief at 21-23.

²⁹ See, e.g., *Fresh Garlic from the People's Republic of China: Final Results of the 23rd Antidumping Duty Administrative Review; 2016-2017*, 84 FR 35601 (July 24, 2019) (*Garlic 23 Final*), and accompanying Issues and Decision Memorandum (IDM) at 22.

³⁰ *Id.*; see also Policy Bulletin 04.1.

³¹ See Infang's Surrogate Comments at Exhibit SV-15.

³² See Policy Bulletin 04.1 (acknowledging the need for flexibility and the use of discretion because the “meaning of ‘significant producer’ can differ significantly from case to case.”).

³³ See *Shenzhen Xinboda Indus. Co., Ltd. v. United States*, 357 F. Supp. 3d 1295, 1306 (CIT 2018) (*Shenzhen Xinboda*).

³⁴ See Infang's Surrogate Comments at Exhibit SV-15.

therefore provide data reflecting market-based transactions. Infang has not offered any meaningful distinction between the significance of Romanian and Mexican 2016 production levels.

Infang's argument that "Mexico is a more significant producer of garlic on the world market, while Romania can have little to no effect on the world garlic market" is unpersuasive.³⁵ Policy Bulletin 04.1 explains that "{b}ecause the meaning of 'significant producer' can differ significantly from case to case," Commerce has not adopted fixed standards such as "one of the top five producers" for selecting surrogate value data. Here, both countries produce amounts that are noticeably and measurably large (54,389 metric tons, for Romania, and 75,987 metric tons, for Mexico) and appear comparably significant.

Finally, Infang also argues that because Romania is not a net exporter of garlic, it may not be considered a significant producer.³⁶ Commerce also determines this argument to be unpersuasive. Policy Bulletin 04.1 does not indicate that a surrogate country must be a net exporter, but merely that, where there may not be data available from major producing countries, a country that is a net exporter could be considered a significant producer, "even though the selected surrogate country may not be one of the world's top producers."³⁷ Here, both Romania and Mexico produce similarly large amounts of garlic. Commerce determines that, because both Romania and Mexico produce a significant amount of garlic and each export garlic,³⁸ both countries may be considered significant producers of comparable merchandise. Thus, Commerce determines that both countries are significant producers of comparable merchandise.

Comment 2: Whether the Garlic Market in Romania is Distorted

Infang's Case Brief

- The Romanian garlic market is distorted by the European Union's (EU) 9.6 percent *ad valorem* duty on imported foreign garlic.³⁹
- A tariff quota effectively adds a 100 percent tariff on Chinese garlic, which has affected the price of garlic in Romania.⁴⁰
- A tariff quota is meant to protect the prices and competition of the domestic market. "It is not a market force driving the garlic prices and supply in Romania; rather, it is EU protectionist intervention in the market that is driving the market supply and costs."⁴¹
- The Romanian garlic market is also suffering from widespread problems with garlic smuggling due to the high tariffs. "A market with protectionist quotas and widespread smuggling cannot be a reliable surrogate pricing market for garlic."⁴²

³⁵ See Infang's Case Brief at 14.

³⁶ *Id.* at 12-14.

³⁷ See Policy Bulletin 04.1.

³⁸ See Infang's Rebuttal Surrogate Comments at Exhibit SV2-2; *see also* Infang's Surrogate Comments at Exhibit SV-16.

³⁹ See Infang's Case Brief at 9 (citing Infang's Rebuttal Surrogate Comments at Exhibit SV2-5).

⁴⁰ *Id.* at 9-10 (citing Infang's Rebuttal Surrogate Comments at Exhibit SV2-1).

⁴¹ *Id.* at 11.

⁴² *Id.* at 11-12.

- While Romania may produce a large amount of garlic, it is highly questionable whether Romanian garlic prices are affected by world garlic trends, and Romania itself cannot be influencing the world garlic market. “Such a market situation cannot be a reliable surrogate for China, a major exporting country that sets market trends.”⁴³

Petitioners’ Rebuttal Brief

- Commerce and the CIT have both rejected similar arguments concerning Infang’s allegation that the garlic market in Romania is distorted by EU tariffs.⁴⁴
- Since Infang has not provided any new arguments concerning the EU tariff, Commerce should continue to reject Infang’s claim in the final results.⁴⁵

Commerce’s Position:

Infang’s arguments concerning the EU’s tariffs on imported garlic, and alleged smuggling of garlic into Romania are unpersuasive. As we stated in the *Preliminary Results*, “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.” Further, “[t]here is no information on the record to support Infang’s claims that EU-imposed tariffs and quotas on imported Chinese garlic have distorted garlic prices in the Romanian market.”⁴⁶ Additionally, the CIT has sustained a similar determination by Commerce, in the 2013-2014 administrative review of the fresh garlic from China order, that it was not proper to infer a causal relationship between EU-imposed tariff quotas and increased Romanian garlic prices because a respondent did not provide any evidence demonstrating such a relationship.⁴⁷ Commerce has also made similar determinations in prior reviews of the fresh garlic from China order.⁴⁸

Here, Infang has not identified any information on the record suggesting that tariffs and quotas have an effect on prices of domestic garlic production in Romania. We, therefore, continue to find no evidence that the Government of Romania undertook steps to interfere with, or to distort, garlic prices during the POR.

⁴³ *Id.* at 14.

⁴⁴ See Petitioners’ Rebuttal Brief at 10-11.

⁴⁵ *Id.* at 11.

⁴⁶ See *Preliminary Results*, and accompanying PDM at 15 (internal citations omitted).

⁴⁷ See *Shenzhen Xinboda*, 357 F. Supp. 3d at 1310-11.

⁴⁸ See *Fresh Garlic from the People’s Republic of China: Final Results and Final Rescission of the 20th Antidumping Duty Administrative Review; 2013-2014*, 81 FR 39897 (June 20, 2016) (*Garlic 20 Final*), and accompanying IDM at 14; see also *Fresh Garlic from the People’s Republic of China: Final Results and Partial Rescission of the 21st Antidumping Duty Administrative Review; 2014-2015*, 82 FR 27230 (June 14, 2017) (*Garlic 21 Final*), and accompanying IDM at 51-52; and *Fresh Garlic from the People’s Republic of China: Final Results and Partial Rescission of the 22nd Antidumping Duty Administrative Review and Final Result and Rescission, in Part, of the New Shipper Reviews; 2015-2016*, 83 FR 27949 (June 15, 2018) (*Garlic 22 Final*), and accompanying IDM at 42.

Comment 3: Whether Garlic Grown in Romania or Mexico is of a Comparable Size to Garlic in China

Infang's Case Brief

- The diameter of garlic grown in China ranges from 40-60mm, which has been confirmed by the International Trade Commission (ITC).⁴⁹
- Commerce's determination that the Romanian garlic bulb is of a comparable size to Chinese garlic is based on one article concerning growing vegetables in Romania. This single article cannot be meaningfully distinguished from the numerous articles on the record concerning Mexican garlic cultivation, productivity, and quality.⁵⁰ There are numerous articles on the record of this review that show that the Mexican varieties of garlic are large bulb garlic, similar to the size of Chinese garlic.⁵¹
- Commerce relied on the exact same information as previous reviews to find that the garlic in Romania is comparable in size to the garlic in China. The weight-to-size ratio of Chinese garlic comes from Alibaba advertisements from 2012 and 2014.⁵²
- Even assuming that the weight-to-size ratio is correct, the information on the record does not demonstrate that Romania produces a significant amount of large bulb garlic on a country wide basis.⁵³
- In fact, one can reasonably assume that the majority of garlic grown in Romania is not large, and not within the size range comparable with Chinese garlic.⁵⁴
- The reported garlic yields in Romania suggest that the Romanian garlic is not comparable to China. Chinese garlic yields were 266,855 hg/ha, while Mexico reported 118,052 hg/ha, and Romania was 53,265 hg/ha.⁵⁵
- Of the 10 varieties of garlic in Mexico, only the smallest size is outside of the range of Chinese garlic bulb sizes. This government classification demonstrates that the majority of Mexican garlic is large bulb.⁵⁶
- The numerous articles on this record firmly establish that Mexico grows large bulb garlic. Commerce simply cannot ignore this mountain of record data, which is vastly superior to the data available for Romanian garlic.⁵⁷
- Mexico is also the second largest exporter of garlic to the United States, after China, and the ITC has recognized the importance of Mexican garlic to the U.S. market.⁵⁸
- If Mexican garlic were lacking in quality and size, the United States would not be using Mexican garlic to supply its own domestic market.⁵⁹

⁴⁹ See Infang's Case Brief at 5; see also Fresh Garlic from China, Inv. No. 731-TA-683 (Third Review), USITC Pub. 4316 (April 2012) (2012 Garlic ITC Report) at I-10.

⁵⁰ See Infang's Case Brief at 15.

⁵¹ *Id.* at 17-20 (citing Infang's Surrogate Comments at Exhibit SV-6).

⁵² *Id.* at 6-7.

⁵³ *Id.* at 7.

⁵⁴ *Id.*

⁵⁵ *Id.* at 8 (citing Infang's Rebuttal Surrogate Comments at Exhibit SV2-7).

⁵⁶ *Id.* at 16-17; see also Infang's Surrogate Comments at Exhibit SV-6.

⁵⁷ See Infang's Case Brief at 21.

⁵⁸ *Id.* at 22-23; see also 2012 Garlic ITC Report at I-11.

⁵⁹ See Infang's Case Brief at 23-24.

Petitioners' Rebuttal Brief

- Infang argues that the record does not support Commerce's determination that the size of garlic grown in Romania is comparable to Chinese garlic. However, the CIT has sustained Commerce's finding concerning the size of Romanian garlic in a previous review of this order, which was a determination made "on nearly identical evidence."⁶⁰
- Infang's argument concerning the differences in yield for garlic harvested in Romania, China, the United States, and Mexico is also misplaced. The document cited by Infang does not draw a correlation between yield and garlic bulb size. "The discussion in that exhibit concerns a comparison between certain varieties of garlic in India, and garlic used as seed in China."⁶¹
- Furthermore, the submission cited to by Infang predates Commerce's use of the intermediate input bulb methodology. "As a result, the discussion of yield in that submission pertained to a determination of what constituted the best available information to value seed."⁶²
- This record does not contain any information concerning a correlation between yield and garlic bulb diameter.⁶³
- The evidence on the record of this review concerning the size of Romanian and Mexican garlic bulbs is nearly identical to the evidence relied upon by Commerce in the *Garlic 20 Final*, which was sustained by the CIT.⁶⁴
- Infang claims that the article concerning the size of garlic bulbs in Romania cannot be meaningfully distinguished from the articles concerning Mexican garlic. However, the Romanian article "does not recite results of a scientific experiment, but rather identifies the various varieties of garlic cultivated in Romania as well as their size."⁶⁵
- Every article cited by Infang to demonstrate that Mexican garlic is similar in size to Chinese garlic concerns an experiment.⁶⁶
- Infang's claim that the Mexican government's classifications for bulb size contained in those articles demonstrate that the majority of garlic grown in Mexico is large is not supported by record evidence. The classification sizes are for commercial garlic only, and do not represent the typical size and quality of the majority of the garlic grown in Mexico.⁶⁷
- Record evidence shows that the majority of garlic produced in Mexico is not suitable for sale on the commercial market. "Although garlic production quantities {in Mexico} are increasing, the quality of the garlic is decreasing, resulting in more poor-quality bulbs each year."⁶⁸

⁶⁰ See Petitioners' Rebuttal Brief at 6; see also *Shenzhen Xinboda*, 357 F. Supp. 3d 1295.

⁶¹ See Petitioners' Rebuttal Brief at 7; see also Infang's Case Brief at 8.

⁶² See Petitioners' Rebuttal Brief at 7, n.10.

⁶³ *Id.* at 7-8.

⁶⁴ *Id.* at 12; see also *Garlic 20 Final*; and *Shenzhen Xinboda*, 357 F. Supp. 3d at 1307-8.

⁶⁵ See Petitioners' Rebuttal Brief at 12-13 (citing Infang's Case Brief at 15); see also Petitioners' Letter, "27th New Shipper Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – Petitioners' Surrogate Country and Surrogate Value Comments," dated September 17, 2018 (Petitioners' Surrogate Comments) at Exhibit ROM-1A.

⁶⁶ See Petitioners' Rebuttal Brief at 13, n.22.

⁶⁷ *Id.* at 14.

⁶⁸ *Id.* (citing Petitioners' Rebuttal Surrogate Comments at Exhibits MEX-1A and MEX-1B).

- Commerce should also reject Infang’s argument that since Mexico exports garlic to the United States, the majority of garlic grown in Mexico must be large in size. Only 20 percent of the garlic grown in Mexico in 2016 was of a quality worthy of export.⁶⁹

Commerce’s Position:

Although fresh garlic from both Romania and Mexico is identical merchandise, *i.e.*, fresh garlic, we continue to find, as we did in the *Preliminary Results*, that the record supports a finding that Romanian garlic bulbs are more comparable than Mexican garlic bulbs to the input garlic bulbs consumed in the production of subject merchandise, because they are similar in size to the input garlic bulbs identified on the record of this review.⁷⁰ Moreover, while garlic in Romania is stored and sold throughout the year, information on the record indicates that garlic grown in Mexico is generally harvested as whole plants, sold immediately after being pulled from the ground, primarily sold as “wet bulbs” in large open sacks, and are not differentiated by size.⁷¹ Garlic harvested in this manner would require significant processing to produce fresh garlic products.⁷²

Chinese input bulbs undergo significant processing by intermediate processors and require only minimal further processing to produce fresh garlic products.⁷³ We note that the various academic articles on the record concerning garlic in Mexico appear to reference scientific research on different cultivation techniques for garlic, rather than the general physical or cultivation characteristics of Mexican garlic as a whole.⁷⁴

Finally, in response to Infang’s argument that the Mexican government’s classification sizes of garlic in Mexico show that the majority of the garlic grown in Mexico is large,⁷⁵ we note that the sizes that Infang references are for “commercial garlic,” and there is no evidence on the record that those sizes are the only sizes that fall under the Mexican government’s standards for garlic.⁷⁶ There is no information on the record to show that the majority of the garlic grown in Mexico is large. Conversely, the Romanian article submitted by petitioners discusses the actual varieties of garlic grown in Romania, as well as their respective sizes.⁷⁷ For these reasons, we continue to

⁶⁹ *Id.* at 15; *see also* Infang’s Surrogate Comments at Exhibit SV-16.

⁷⁰ *See Preliminary Results*, and accompanying PDM at 14-15.

⁷¹ *See* Petitioners’ Surrogate Comments at Exhibit ROM-1A; *see also* Petitioners’ Rebuttal Surrogate Comments at Exhibit MEX-1A.

⁷² *See* Petitioners’ Rebuttal Surrogate Comments at Exhibit MEX-1A.

⁷³ *Id.*

⁷⁴ *See, e.g.*, Infang’s Surrogate Comments at Exhibit SV-6. The article entitled “Garlic Productivity and Profitability as Affected by Seed Clove Size, Planting Density and Planting Method” only relates to one type of Mexican garlic, “Tacatzcaro.” Furthermore, the article entitled “Productivity and Quality of Varieties of Garlic Under Desert Conditions in Caborca, Sonora” is a research article concerning which varieties of garlic are better suited to desert conditions.

⁷⁵ *See* Infang’s Case Brief at 15-21.

⁷⁶ *See* Infang’s Surrogate Comments at Exhibit SV-6. The article entitled “Non Industrialized Food Products for Human Consumption – Species – Garlic – Specifications,” at 5.3.1 (we note that this article’s translation is difficult to read in places, and is unreliably translated in other places); *see also* Infang’s Case Brief at 16.

⁷⁷ *See* Petitioners’ Surrogate Comments at Exhibit ROM-1A.

find that the fresh garlic produced in Romania is more physically similar than the garlic produced in Mexico to the Chinese subject merchandise.

Comment 4: Whether Romania or Mexico Offer the Best Data

Infang's Case Brief

- Commerce has consistently found that FAOSTAT data are tax and duty exclusive and representative of the broadest market average of prices received by farmers for primary crops.⁷⁸
- Commerce has also rejected sources of surrogate values that include additional charges because they were not specific to the level of trade of respondents.⁷⁹
- Commerce has successfully defended its preference for the use of farmgate prices over wholesale prices to value respondents' garlic in the CIT.⁸⁰
- The official government sources for the garlic bulb prices in Romania and Mexico both provide their data to the annual statistics published by the FAOSTAT. However, the Romanian producer prices for garlic, along with other vegetables, are actually wholesale prices.⁸¹
- Infang's producer purchased its input garlic bulbs directly from farmers within a 15-kilometer radius. The producer's purchases were at the first marketing stage (farmgate), while the wholesale level is three levels of trade downstream.⁸²
- The wholesale nature of the Romanian garlic price and the protectionist quota in Romania both make the Romanian garlic prices non-comparable to Infang's garlic bulb prices, unreliable as a surrogate source, and not the best available information on the record for valuation of Infang's garlic input price.⁸³
- Unlike Romania, the Mexican garlic price is a farmgate price, exclusive of taxes or duties.⁸⁴
- The Mexican SIAP price and the Mexican FAOSTAT price of garlic are on the record of this review. The SIAP data are the source for the FAOSTAT data, and Commerce has found that FAOSTAT prices are farmgate specific, based on a broad market average, contemporaneous, exclusive of taxes and duties, and publicly available.⁸⁵

⁷⁸ See Infang's Case Brief at 2 (citing *Fresh Garlic 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 IDM (*Merry Vegetable and Cangshan Final Results*) at 8).

⁷⁹ *Id.* (citing *Merry Vegetable and Cangshan Final Results*, and accompanying IDM at 8).

⁸⁰ *Id.*; see also *Fresh Garlic Producers Ass'n v. United States*, 83 F. Supp. 3d 1330 (CIT 2015) (*FGPA*).

⁸¹ See Infang's Case Brief at 2-3; see also Infang's Letter, "Fresh Garlic from the People's Republic of China – Rebuttal Surrogate Country Comments and Surrogate Values for the Preliminary Results," dated October 1, 2018 (Infang's Rebuttal Surrogate Comments) at Exhibit SV2-10.

⁸² See Infang's Case Brief at 3-4.

⁸³ *Id.* at 4.

⁸⁴ *Id.*

⁸⁵ *Id.* at 24-25 (citing Infang's Surrogate Comments at Exhibits SV-4 and SV5); see also *Preliminary Results*, and accompanying PDM at 22; and *Merry Vegetable and Cangshan Final Results*, and accompanying IDM at 8.

- Mexico is the best choice as the surrogate country because it exports a significant amount of garlic, is economically comparable to China, and has the best available information to value the primary input.⁸⁶
- The Mexican garlic bulb price is also a farmgate price, which meets the critical and dispositive level of trade standard applied by Commerce to value Infang’s garlic.⁸⁷
- There are also complete and reliable data for all other factors of production in Mexico on the record of this review.⁸⁸
- Commerce has the definition of the HTS categories submitted for the “mere six minor inputs” where the Mexican data were not specifically translated. Furthermore, Infang is “unaware of a circumstance where {Commerce} has ever found import statistics to be unusable for not providing the underlying definitions.”⁸⁹
- Finally, the Romanian import data are sourced from Trade Data Monitor (TDM), which Commerce has found unusable in recent cases.⁹⁰ Commerce cannot act arbitrarily by finding a source reliable in this case, and unreliable in other cases.⁹¹

Petitioners’ Rebuttal Brief

- Romania remains the best available country to value all of Excelink’s factors of production.⁹²
- Infang’s producer, Excelink, reported that “the farmer supplier rented storage facilities from third parties to store its garlic.” Therefore, Excelink did not purchase input garlic bulbs at farmgate prices.⁹³
- Furthermore, Commerce has found, and the CIT has affirmed, that Excelink did not pay farmgate prices in the 20th review of fresh garlic from China.⁹⁴
- Infang’s submissions in this review show that Excelink’s purchasing patterns have not changed since the 20th review.⁹⁵
- Infang also argues that the Romanian prices for garlic bulbs are inferior to the Mexican prices because the Romanian prices are wholesale rather than farmgate. Commerce should continue to reject this argument, as it has in previous segments.⁹⁶

⁸⁶ See Infang’s Case Brief at 25.

⁸⁷ *Id.*

⁸⁸ *Id.* at 28 (citing Infang’s Surrogate Comments).

⁸⁹ *Id.* at 28-29.

⁹⁰ *Id.* at 29; see also *Chlorinated Isocyanurates from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 42891 (August 19, 2019) (*Chloro Isos from China Prelim*), and accompanying PDM at 16; *Steel Propane Cylinders from the People’s Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination Measures*, 83 FR 66675 (December 27, 2018) (*Propane Cylinders from China Prelim*), and accompanying PDM at 11; and *Certain Activated Carbon from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017-2018*, 84 FR 27758 (June 14, 2019) (*Activated Carbon from China Prelim*).

⁹¹ See Infang’s Case Brief at 29-30; see also *SKF USA Inc. v. United States*, 263 F.3d 1369, 1382 (CAFC 2001); and *Consol. Bearings Co. v. United States*, 348 F.3d 997, 1007 (CAFC 2003).

⁹² See Petitioners’ Rebuttal Brief at 3.

⁹³ *Id.* at 19 (citing Infang’s April 1, 2019 SQR at 7).

⁹⁴ *Id.*; see also *Shenzhen Xinboda*, 357 F. Supp. 3d at 1295.

⁹⁵ See Petitioners’ Rebuttal Brief at 20.

⁹⁶ *Id.* at 16.

- None of the Mexican prices for input garlic bulbs are fully contemporaneous with this review’s POR. The SIAP price is for 2017, which would only include two months of this POR, and the FAOSTAT price is for 2016, which does not cover any portion of this POR.⁹⁷
- Importantly, Infang reported that its producer made its sole purchase of input garlic bulbs in April of 2018, which is not covered by either the SIAP data or the FAOSTAT data from Mexico.⁹⁸
- The third source of Mexican garlic prices consists of a summary of prices for certain months, only three of which overlap with this POR. However, the summary table is not accompanied by the underlying supporting source documentation for the prices, and as such, is unusable.⁹⁹
- The Mexican import statistics placed on the record by Infang were not translated into English, and therefore, Commerce properly found that they were not usable.¹⁰⁰
- Furthermore, even if the Mexican import statistics were usable, they were reported on a free-on-board (FOB) basis, which is contrary to Commerce’s practice.¹⁰¹
- The cases cited by Infang to support its argument that Commerce’s decision to rely on TDM data in this case was arbitrary and capricious involved situations in which there was usable data from other preferred sources. This record only contains usable data from TDM, thus Commerce’s use of that data was not arbitrary or capricious.¹⁰²

Commerce’s Position:

As explained above, both Romania and Mexico satisfy the requirements of section 773(c)(4) of the Act. “[I]f more than one country has survived the selection process . . . , the country with the best factors data is selected as the primary surrogate country.”¹⁰³ In selecting the “best available information,” under section 773(c)(1) of the Act, Commerce evaluates SVs based on a well-established set of criteria that includes “a strong preference for valuing all FOPs in the primary surrogate country, as well as a preference for prices which are period-wide, representative of a broad market average, specific to the input in question, net of taxes and import duties, contemporaneous with the period under consideration, and publicly available.”¹⁰⁴ Commerce also, according to 19 CFR 351.408(c)(2), normally will value all factors in a single surrogate country.

We continue to rely on the SV information from Romania for these final results. We also continue to determine that the wholesale Romanian garlic bulb data are representative of garlic

⁹⁷ *Id.* at 17.

⁹⁸ *Id.*; *see also* Infang’s April 1, 2019 Supplemental Questionnaire Response (Infang’s April 1, 2019 SQR) at 6.

⁹⁹ *See* Petitioners’ Rebuttal Brief at 17; *see also* Infang’s Surrogate Comments at Exhibit SV-3.

¹⁰⁰ *See* Petitioners’ Rebuttal Brief at 21.

¹⁰¹ *Id.*; *see also* Policy Bulletin 10.2: Inclusion of International Freight Costs When Import Prices Constitute Normal Value (November 1, 2010) (Policy Bulletin 10.2).

¹⁰² *See* Petitioners’ Rebuttal Brief at 22-23.

¹⁰³ *See* Policy Bulletin 04.1.

¹⁰⁴ *See 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 IDM at Comment 1; *Preliminary Results*, and accompanying PDM at 12; and Policy Bulletin 04.1.

inputs purchased by Infang because the record of this review shows that Infang purchases its garlic on a “wholesale” basis. Specifically, the price paid by Infang includes further processing (e.g., cold storage or controlled atmosphere (CA) facilities in order to remain viable for processing outside of the summer harvest months).¹⁰⁵ This finding with respect to Infang is consistent with findings in prior reviews of this order with respect to other respondents, where Commerce has also relied on surrogate information from Romania, and found that Romanian garlic is priced at the wholesale level.¹⁰⁶ Accordingly, we continue to find that the wholesale price of Romanian garlic is a reliable SV for Infang’s purchases of garlic bulbs.

Given the cold storage reported by Excelink and the timing of its purchase of garlic bulbs,¹⁰⁷ Infang’s contention that its supplier paid farmgate prices for garlic bulbs is unsupported by the record. In its case brief, Infang argues that the wholesale price of Romania’s garlic bulb pricing data make these prices unsuitable for SV use.¹⁰⁸ Infang alleges that, although the price reported to the United Nations Food and Agriculture Organization (UN FAO) by the Romanian National Institute of Statistics is intended to represent a farmgate price, it is actually more appropriate to consider it a wholesale price.¹⁰⁹ Infang points to the UN FAO country notes, indicating that for several vegetables, including garlic, the prices reported to the UN FAO are actually “wholesale,” not farmgate prices.¹¹⁰ Indeed, Commerce previously determined that the Romanian garlic bulb data prices were not farmgate prices, as the garlic was sold throughout the year. Commerce has found “{g}iven that Romanian garlic is also semi-perishable, any raw garlic sold in Romania from October through early June would also require either cold storage or {controlled atmosphere} storage facilities in order to remain viable.”¹¹¹ Thus, the cold storage reported by Excelink,¹¹² is one example of a cost indicating that Romanian garlic, which is not sold at farmgate prices, but, rather, wholesale prices, is more suitable to value Infang’s and Excelink’s FOPs in this review.

Moreover, Infang argues that because Commerce has used farmgate prices in the new shipper reviews for Jinxiang Merry Vegetable Co., Ltd. (Jinxiang) and Cangshan Qingshui Vegetable Foods Co., Ltd (Cangshan), Commerce should also use Mexican garlic farmgate prices in the instant review.¹¹³ However, there is no information on the record of this review with respect to Jinxiang’s or Cangshan’s respective garlic purchasing and production practices (e.g., what month they purchased/processed garlic in China) and such information would not likely be relevant to the price that Infang pays for garlic.¹¹⁴ Here, Infang purchased and processed garlic that had

¹⁰⁵ See Infang’s April 1, 2019 SQR at 7-8.

¹⁰⁶ See, e.g., *Garlic 23 Final*, and accompanying IDM at 23-24; and *Garlic 22 Final*, and accompanying IDM at 40-42.

¹⁰⁷ See Infang’s April 1, 2019 SQR at 7.

¹⁰⁸ See e.g., Infang’s Case Brief at 4.

¹⁰⁹ *Id.* at 3.

¹¹⁰ *Id.*

¹¹¹ See *Garlic 20 Final*, and accompanying IDM at 28-29; see also *Garlic 21 Final*, and accompanying IDM at 50-53; *Garlic 22 Final*, and accompanying IDM at 40-42; and *Garlic 23 Final*, and accompanying IDM at 24.

¹¹² See Infang’s April 1, 2019 SQR at 7.

¹¹³ See Infang’s Case Brief at 2.

¹¹⁴ See *Merry Vegetable and Cangshan Final Results*, and accompanying IDM at 8; see also *Fresh Garlic Producers Ass’n v. United States*, 83 F Supp. 3d 1330 (CIT 2015).

been cold stored and or CA-stored.¹¹⁵ Furthermore, there are no Mexican garlic prices for April 2018, the month that Infang's supplier, Excelink, purchased its input garlic bulbs,¹¹⁶ on the record of this review. As such, Mexican farmgate garlic prices are less reflective of the price paid by Excelink for Chinese garlic than the Romanian garlic data because Mexican prices do not include further processing, cold storage and or CA storage costs, and Mexican data does not cover the time period in which Excelink purchased the garlic.

Infang's arguments concerning Commerce's reliance on TDM data in this case, while declining to use it in other cases, lacks merit.¹¹⁷ In the cases cited by Infang,¹¹⁸ Commerce had other reliable data at its disposal from the Global Trade Atlas (GTA).¹¹⁹ In this review, there are no usable alternative import statistics on the record, because those provided by Infang were not translated.¹²⁰ Section 351.303(e) of Commerce's regulations states, in part, "a document submitted in a foreign language must be accompanied by an English translation of the entire document." Infang failed to submit a translated version of its proposed SVs, and thus Commerce was left to consider whether the TDM data could be used.

Furthermore, while we agree with Infang's argument that the Mexican garlic bulb data may be reliable because they are the source for the UN FAO data, the Romanian data are more contemporaneous. Commerce has relied on the UN FAO data in the past, and continues to find that the UN FAO data on the record for Mexico are, generally, reliable because they are: (1) specific; (2) based on a broad market average; (3) exclusive of taxes and duties; and (4) publicly available.¹²¹ We further note, however, that the Romanian garlic data reported to the UN FAO are: (1) specific; (2) based on a broad market average; (3) contemporaneous; (4) exclusive of taxes and duties; and (5) publicly available.¹²² Because the Romanian data are contemporaneous with the POR and the Mexican data are not fully contemporaneous with this segment's POR,¹²³ the Romanian data are superior in this respect. Thus, Commerce continues to rely on Romanian SV data for these final results.

¹¹⁵ See Infang's April 1, 2019 SQR at 7.

¹¹⁶ *Id.* at 6.

¹¹⁷ See Infang's Case Brief at 29-30.

¹¹⁸ See *Chloro Isos from China Prelim*, and accompanying PDM at 16; see also *Propane Cylinders from China Prelim*, and accompanying PDM at 11; and *Activated Carbon from China Prelim*, and accompanying PDM at 15.

¹¹⁹ See *Chloro Isos from China Prelim*, and accompanying PDM at 16; see also *Propane Cylinders from China Prelim*, and accompanying PDM at 11 (unchanged in *Steel Propane Cylinders from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 84 FR 29161 (June 21, 2019), and accompanying IDM); and *Activated Carbon from China Prelim*, and accompanying PDM at 15. Although Infang cites *Chloro Isos from China Prelim* and *Activated Carbon from China Prelim*, Commerce has not issued final results with respect to these administrative reviews.

¹²⁰ See Infang's Surrogate Comments at Exhibit SV-2; see also *Preliminary Results*, and accompanying PDM at 13.

¹²¹ See, e.g., *Garlic 22 Final*, and accompanying IDM at 41.

¹²² *Id.*

¹²³ See Infang's Surrogate Comments at Exhibits SV-4 and SV-5 (showing that the SIAP and UN FAO data for Mexico are annual, and only cover 2017 and 2016, respectively); see also Infang's Surrogate Comments at Exhibit SV-3 (showing the monthly data is limited in availability, and only covers 3 months of the POR); and Petitioners' Surrogate Comments at Exhibit 1A (showing monthly garlic prices in Romania for each month of the POR).

V. RECOMMENDATION

We recommend adopting the above position. If this recommendation is accepted, we will publish the *Final Results* of this new shipper review in the *Federal Register*.

Agree

Disagree

11/1/2019

X 

Signed by: JEFFREY KESSLER
Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance