



A-570-831
Administrative Review
11/01/2017 – 10/31/2018
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January 8, 2020

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 Preliminary Results, Preliminary Rescission, and Final Rescission, In Part, of the 2017-2018 Antidumping Duty Administrative Review: Fresh Garlic from the People's Republic of China

I. SUMMARY

In response to requests from interested parties, the Department of Commerce (Commerce) is conducting an administrative review (AR) of the antidumping duty (AD) order on fresh garlic from the People's Republic of China (China)¹ covering the period of review (POR) of November 1, 2017 through October 31, 2018. The mandatory respondents in the abovementioned administrative review are Zhengzhou Harmoni Spice Co., Ltd. (Harmoni) and Shijiazhuang Goodman Trading Co., Ltd. (Goodman).

Commerce preliminarily finds that Goodman sold subject merchandise to the United States at less than normal value (NV). We are also preliminarily granting a separate rate to three 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. Furthermore, we preliminarily find that the review requests made by the Coalition for Fair Trade in Garlic, and its individual members (collectively, the CFTG), and Roots Farm Inc. (Roots Farm) were not valid, and accordingly have preliminarily rescinded the review request with respect to 19 companies.²

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

² The CFTG and Roots Farm requested that Commerce review a total of 22 companies. No other review requests were submitted for 19 of these companies.



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

II. BACKGROUND

On November 1, 2018, Commerce published a notice of opportunity to request an administrative review of the AD order on garlic from China.³ Between November 28 and 30, 2018, interested parties submitted requests for review. On February 6, 2019, Commerce initiated the 24th AR of the AD order on fresh garlic from China with respect to 23 companies.⁴ On March 14, 2019, Commerce initiated this review with respect to ten companies that were inadvertently omitted from the *Initiation Notice*.⁵

Jinxiang Infang Fruit & Vegetable Co., Ltd. (Infang) timely submitted a “no shipment” certification, attesting that it had no entries of subject merchandise during the POR.⁶

Five companies each timely submitted a separate rate status certification or application. Those companies are: (1) Goodman;⁷ (2) Jinxiang Feiteng Import & Export Co., Ltd (Feiteng);⁸ (3) Qingdao Sea-line Trading Co., Ltd. (Sea-line);⁹ (4) Chengwu Yuanxiang Industry & Commerce Co., Ltd. (Chengwu);¹⁰ and (5) Harmoni.¹¹

On April 3, 2019, Commerce placed U.S. Customs and Border Protection (CBP) entry data on the record and gave interested parties an opportunity to comment.¹² On April 17, 2019, the

³ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 83 FR 54912 (November 1, 2018).

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 2159 (February 6, 2019) (*Initiation Notice*).

⁵ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 9297 (March 14, 2019).

⁶ See Infang’s Letter, “Fresh Garlic from the People’s Republic of China Refiling No Sales Certification & NSR Clarification Letter,” dated March 11, 2019 (Infang’s No Sales Certification).

⁷ See Goodman’s Letter, “Fresh Garlic from the People’s Republic of China, Separate Rate Certification of Shijiazhuang Goodman Trading Co., Ltd.,” dated February 27, 2019.

⁸ See Feiteng’s Letter “Fresh Garlic from the People’s Republic of China Separate Rate Certification,” dated March 7, 2019 (Feiteng’s SRC).

⁹ See Sea-line’s Letter, “Fresh Garlic from the PRC: Separate Rate Certification of Qingdao Sea-line International Trading Co., Ltd.,” dated March 8, 2019 (Sea-line’s SRC).

¹⁰ See Chengwu’s Letter, “Fresh Garlic from the People’s Republic of China Separate Rater Certification,” dated March 29, 2019 (Chengwu’s SRC).

¹¹ See Harmoni’s Letter, “Zhengzhou Harmoni Separate Rate Application in the Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China,” dated March 27, 2019 (Harmoni’s SRA).

¹² See Memorandum, “Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China: 2017-2018 – U.S. Import Data,” dated April 3, 2019.

petitioners¹³ submitted comments on the CBP data.¹⁴ The petitioners argued that Roots Farm and its affiliate, U.S. Produce Export (US Produce), illegally smuggled subject merchandise into the United States during the POR by falsely claiming the goods were not subject merchandise.¹⁵ On May 30, 2019, Commerce issued a memorandum indicating that we would examine the two largest exporters of subject merchandise, Goodman and Harmoni.¹⁶

On June 11, 2019, Commerce issued questionnaires to Goodman and Harmoni.¹⁷ Between July 2 and August 1, 2019, Goodman timely submitted responses to this questionnaire.¹⁸ Between July 11 and August 1, 2019, Harmoni submitted timely responses to this questionnaire.¹⁹ On November 26, 2019, Commerce issued a supplemental questionnaire to Goodman,²⁰ to which Goodman submitted a timely response on December 11, 2019.²¹ On December 2, 2019, the petitioners submitted rebuttal factual information concerning Goodman's December 11, 2019 SQR.²² However, Commerce did not consider this submission for these *Preliminary Results*.

On December 9, 2019, Commerce issued a supplemental questionnaire for Harmoni,²³ to which Harmoni submitted a timely response on December 23, 2019.²⁴ On January 3, 2020, both the CFTG and Roots Farm submitted rebuttal factual information concerning Harmoni's December 23, 2019 SQR.²⁵

¹³ The petitioners are the Fresh Garlic Producers Association (FGPA) and its individual members: Christopher Ranch L.L.C., The Garlic Company, and Valley Garlic.

¹⁴ See Petitioners' Letter, "24th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – Petitioners' Comments on CBP Data," dated April 17, 2019.

¹⁵ *Id.* at 2.

¹⁶ See Memorandum, "Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: 2017-2018 – Selection of Respondents for Individual Examination," dated May 30, 2019 (Respondent Selection Memorandum).

¹⁷ See Commerce's Letter, "Antidumping Duty Questionnaire," dated June 11, 2019.

¹⁸ See Goodman's July 2, 2019 Section A Questionnaire Response; see also Goodman's August 1, 2019 Section C Questionnaire Response (Goodman's August 1, 2019 CQR); and Goodman's August 1, 2019 Section D Questionnaire Response.

¹⁹ See Harmoni's July 11, 2019 Section A Questionnaire Response; see also Harmoni's August 1, 2019 Section C Questionnaire Response (Harmoni's August 1, 2019 CQR); and Harmoni's August 1, 2019 Section D Questionnaire Response.

²⁰ See Commerce's Letter, "24th Administrative Review of Fresh Garlic from the People's Republic of China – First Supplemental Questionnaire for Goodman," dated November 26, 2019.

²¹ See Goodman's December 11, 2019 Supplemental Questionnaire Response (Goodman's December 11, 2019 SQR).

²² See Petitioners' Letter, "24th 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 Shijiazhuang Goodman Trading Co., Ltd.'s 1st Supplemental Questionnaire Response," dated December 23, 2019.

²³ See Commerce's Letter, "24th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – First Supplemental Questionnaire for Harmoni," dated December 9, 2019.

²⁴ See Harmoni's December 23, 2019 Supplemental Questionnaire Response (Harmoni's December 23, 2019 SQR).

²⁵ See CFTG's Letter, "24th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – Rebuttal to Zhengzhou Harmoni Spice Co., Ltd.'s Supplemental Section A, C, and D Questionnaire Response – filed on behalf of the CFTG," dated January 2, 2020; see also Roots Farm's Letter, "Fresh Garlic from the People's Republic of China Antidumping Administrative Review: Comments on Response to Supplemental Sections A, C&D Response filed by Zhengzhou Harmoni Spice Co., Ltd.," dated January 3, 2020.

On August 28 and September 9, 2019, Commerce requested information and comments from interested parties relating to the selection of a surrogate country and surrogate values for this administrative review.²⁶ Commerce received timely filed comments and/or rebuttals from Harmoni, the petitioners, and Goodman.²⁷

Between February 14 and July 29, 2019, Harmoni, the petitioners, the CFTG, and Roots Farm submitted letters regarding the credibility and standing of the CFTG and Roots Farm.²⁸ On

²⁶ See Commerce's Letter, "24th Antidumping Duty Administrative Review of Garlic from the People's Republic of China: Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information" dated August 28, 2019 (2018 Surrogate Country List); see also Memorandum, "24th Administrative Review of Fresh Garlic from the People's Republic of China: Surrogate Country List," dated September 9, 2019 (2017 Surrogate Country List).

²⁷ See Harmoni's Letter, "Harmoni's Surrogate Country Comments in the Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China," dated October 11, 2019 (Harmoni's SC Comments); see also Petitioners' Letter, "24th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – Petitioners' Surrogate Country Comments," dated October 11, 2019 (Petitioners' SC Comments); Petitioners' Letter, "24th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – Petitioners' Surrogate Country Rebuttal Comments," dated October 21, 2019; Petitioners' Letter, "24th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – Petitioners' Preliminary Surrogate Value Submission," dated November 15, 2019 (Petitioners' SV Submission); Petitioners' Letter, "24th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – Petitioners' Final Surrogate Value Submission," dated December 10, 2019 (Petitioners' Final SV Submission); Goodman's Letter, "24th Administrative Review of Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Resubmission of Goodman's Information to Value Factors of Production," dated December 19, 2019 (Goodman's SV Submission); Petitioners' Letter, "24th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – Petitioners' Rebuttal to Goodman's Surrogate Value Comments," dated December 24, 2019 (Petitioners' Rebuttal SV Comments); and Petitioners' Letter, "24th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – Petitioners' Pre-Preliminary Comments on Surrogate Country and Value Selections," dated December 24, 2019 (Petitioners' Pre-Prelim Surrogate Comments).

²⁸ See Harmoni's Letter, "Harmoni Placing AR22 Documents on the Administrative Record in AR24; Antidumping Duty Order on Fresh Garlic from the People's Republic of China," dated February 14, 2019 (AR21-22 Documents); see also CFTG's Letter, "24th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – Comments on NPR Interview of Ken Christopher – Filed on Behalf of the CFTG and its Individual Members," dated February 27, 2019; Harmoni's Letter, "Harmoni Placing AR23 Documents on the Administrative Record in AR24; Antidumping Duty Order on Fresh Garlic from the People's Republic of China," dated March 26, 2019; Harmoni's Letter, "Resubmission of March 5, 2019 Request by Harmoni to Deny Robert T. Hume APO Access; Antidumping Duty Order on Fresh Garlic from the People's Republic of China," dated March 27, 2019; Harmoni's Letter, "Harmoni Placing AR23 Document on the Administrative Record in AR24; Antidumping Duty Order on Fresh Garlic from the People's Republic of China," dated April 8, 2019; Harmoni's Letter, "Request for Rejection of Roots Farm Inc. POR 24 Administrative Review Request on Harmoni: 24th Administrative Review of Antidumping Duty Order on Fresh Garlic from the People's Republic of China," dated April 8, 2019 (Harmoni's April 8, 2019 Letter); CFTG's Letter, "24th Administrative Review of Fresh Garlic from the People's Republic of China – Request that the Department Obtain Clarification from Counsel for Zhengzhou Harmoni Spice Co., Ltd. and its U.S. Affiliate Harmoni International Spice, Inc. as to Source and Circumstances of Emails relating to the Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – filed on behalf of the CFTG," dated April 8, 2019; Harmoni's Letter, "Harmoni Reply to CFTG Letter of April 8, 2019; Antidumping Duty Order on Fresh Garlic from the People's Republic of China," dated April 9, 2019; Harmoni's Letter, "Request that the Department Reject the CFTG's POR 24 Administrative Review Request on Harmoni or Alternatively, Require that the CFTG Establish that its Members Qualify as Domestic Interested Parties; 24th Administrative Review of Antidumping Duty Order on Fresh Garlic from the People's Republic of China," dated April 11, 2019; CFTG's Letter, "24th Administrative Review of Fresh Garlic from the

People’s Republic of China – Response to the February 14, March 5, and March 27, 2019 filings of Zhengzhou Harmoni Spice Co., Ltd. and Harmoni International Spice, Inc. – filed on behalf of the Coalition for Fair Trade in Garlic (CFTG),” dated April 16, 2019; Roots Farm’s Letter, “Fresh Garlic from the People’s Republic of China Antidumping Administrative Review: Response to Unsupported Request of Zhengzhou Harmoni Spice Co., Ltd., to Evade Review, Again,” dated April 26, 2019 (Roots Farm’s April 26, 2019 Letter); Harmoni’s Letter, “Harmoni’s Reply to the CFTG’s Response to Harmoni’s Request for Denial of Robert T. Hume’s APO Access in the 24th Administrative Review of Antidumping Duty Order on Fresh Garlic from the People’s Republic of China,” dated April 30, 2019; Roots Farm’s Letter, “Fresh Garlic from the People’s Republic of China Antidumping Administrative Review: Second Additional Factual Information,” dated May 3, 2019; Roots Farm’s Letter, “Fresh Garlic from the People’s Republic of China Antidumping Administrative Review: Additional Factual Information,” dated May 6, 2019 (Roots Farm’s May 6, 2019); CFTG’s Letter, “24th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China – Presentation of New Factual Information and a Request that the Department Pursue a 18 U.S.C. § 1001 case against Cynthia Medina,” dated May 14, 2019; Harmoni’s Letter, “Harmoni’s Submission of New Factual Information in Reply to Roots Responses to Harmoni’s Request that Commerce Reject Roots Request to Review Harmoni, in the 24th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China,” dated May 16, 2019; Harmoni’s Letter, “Harmoni’s Reply to the CFTG’s Letter of May 14, 2019 in the 24th Administrative Review of Antidumping Duty Order on Fresh Garlic from the People’s Republic of China,” dated May 16, 2019; Harmoni’s Letter, “Harmoni’s Supplemental Submission of New Factual Information in Reply to Roots Responses to Harmoni’s Request that Commerce Reject Roots Request to Review Harmoni, in the 24th Administrative Review of Antidumping Duty Order on Fresh Garlic from the People’s Republic of China,” dated May 17, 2019; CFTG’s Letter, “24th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China – New Factual Information to Further Support the Request that the Department Pursue a 18 U.S.C. § 1001 action against Cynthia Medina Ferebee,” dated May 22, 2019; Harmoni’s Letter, “Harmoni’s Submission of Additional New Factual Information Regarding Roots in the 24th Administrative Review of Antidumping Duty Order on Fresh Garlic from the People’s Republic of China,” dated May 29, 2019 (Harmoni’s May 29, 2019 Letter); Roots Farm’s Letter, “Fresh Garlic from the People’s Republic of China Antidumping Administrative Review: Clarification to Response to Second Unsupported Request of Zhengzhou Harmoni Spice Co., Ltd., to Evade Review, Again,” dated May 29, 2019; Roots Farm’s Letter “Fresh Garlic from the People’s Republic of China Antidumping Duty Administrative Review: Response to Second Unsupported Request of Zhengzhou Harmoni Spice Co., Ltd., to Evade Review, Again,” dated May 29, 2019; Harmoni’s Letter, “Harmoni’s Reply to the CFTG’s Letter of May 22, 2019 and Additional Factual Information in the 24th Administrative Review of Antidumping Duty Order on Fresh Garlic from the People’s Republic of China,” dated June 5, 2019; Harmoni’s Letter, “Harmoni’s Supplemental Submission of New Factual Information in Reply to Roots May 28, 2019 Response to Harmoni’s Request that Commerce Reject Roots Request to Review Harmoni, in the 24th Administrative Review of Antidumping Duty Order on Fresh Garlic from the People’s Republic of China,” dated June 6, 2019; CFTG’s Letter, “24th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China – Factual Information to Support Previous Request that the Department Pursue a 18 U.S.C. § 1001 Action Against Cynthia Medina Ferebee and Consider a Witness Tampering Action,” dated June 13, 2019; Roots Farm’s Letter, “Fresh Garlic from the People’s Republic of China Antidumping Administrative Review: Response to New Factual Information Submitted by Zhengzhou Harmoni Spice Co., Ltd.,” dated June 18, 2019 (Roots Farm’s June 18, 2019 Letter); Harmoni’s Letter, “Harmoni’s New Factual Information and Reply to Roots June 17, 2019 Response to NFI Submitted by Harmoni and Renewed Request for Rejection of Roots Review Request, in the 24th Administrative Review of Antidumping Duty Order on Fresh Garlic from the People’s Republic of China,” dated June 21, 2019 (Harmoni’s June 21, 2019); Roots Farm’s Letter, “Fresh Garlic from the People’s Republic of China Antidumping Administrative Review: Response to June 18 and June 21 Submissions by Zhengzhou Harmoni Spice Co., Ltd.,” dated July 1, 2019; Harmoni’s Letter, “Harmoni’s Corrected Supplemental Comments and Additional New Factual Information and Reply to Roots May 28, 2019 Response to Harmoni’s Request that Commerce Reject Roots Request to Review Harmoni, in the 24th Administrative Review of Antidumping Duty Order on Fresh Garlic from the People’s Republic of China,” dated July 1, 2019; CFTG’s Letter, “24th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China – New Factual Information to Further Support the Request that the Department Pursue a 18 U.S.C. § 1001 action against Cynthia Medina Ferebee,” dated July 18, 2019; the Petitioners’ Letter, “24th Administrative Review of the Antidumping Duty Order

August 19, 2019, Commerce issued a questionnaire to the CFTG and Roots Farm.²⁹ On September 17, 2019, the CFTG filed its response to Commerce’s questionnaire.³⁰ On September 19, 2019, Roots Farm filed its response to Commerce’s questionnaire.³¹ On October 11, 2019, the petitioners and Harmoni submitted rebuttal factual information pertaining to Roots Farm’s September 19, 2019 QR and the CFTG’s September 17, 2019 QR.³² Between August 27 and December 31, 2019, the petitioners, Harmoni, and the CFTG submitted further comments regarding the standing of the CFTG.³³

on Fresh Garlic from the People’s Republic of China – Petitioners’ Request for Partial Rescission of Review,” dated July 18, 2019; and CFTG’s Letter, “24th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China – Response to the Fresh Garlic Producers Association (FGPA) Request for Partial Rescission Review by the Coalition for Fair Trade in Garlic (CFTG),” dated July 29, 2019.

²⁹ See Commerce’s Letter, “Domestic Interested Party Questionnaire for the CFTG,” dated August 19, 2019 (CFTG Standing Questionnaire); and Commerce’s Letter, “Domestic Interested Party Questionnaire for Roots Farm,” dated August 19, 2019 (Roots Farm Standing Questionnaire).

³⁰ See CFTG’s September 17, 2019 Standing Questionnaire Response, (CFTG’s September 17, 2019 QR) (refiled without double-bracketing on January 6, 2020). See CFTG’s January 6, 2020 Standing Questionnaire Response (CFTG’s January 6, 2020 QR); and Commerce’s Letter, “24th Antidumping Duty Administrative Review of Fresh Garlic from the People’s Republic of China: Response to the CFTG’s Request to Double-Bracket,” dated January 3, 2020.

³¹ See Roots Farm’s September 19, 2019 Standing Questionnaire Response (Roots Farm’s September 19, 2019 QR).

³² See Petitioners’ Letter, “24th 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 Standing Questionnaires,” dated October 11, 2019; see also Harmoni’s Letter, “Harmoni’s Comments on Responses of the CFTG to the Department’s August 19, 2019, Standing Questionnaire, in the 24th Administrative Review of Antidumping Duty Order on Fresh Garlic from the People’s Republic of China,” dated October 11, 2019; and Harmoni’s Letter, “Harmoni’s Comments and Additional Factual Information to Rebut Information Contained in Response of Roots Farm to the Department’s August 19, 2019 Standing Questionnaire, in the 24th Administrative Review of Antidumping Duty Order on Fresh Garlic from the People’s Republic of China,” dated October 11, 2019 (Harmoni’s Rebuttal to Roots QR).

³³ See CFTG’s Letter, “24th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China – Request that the Department Reject Submission filed on behalf of the Fresh Garlic Producers Association (FGPA) Until Each Member of the FGPA Establishes its Standing to Participate in the Garlic 24 AR – filed on behalf of the Coalition for Fair Trade in Garlic (CFTG),” dated August 27, 2019; see also CFTG’s Letter, “24th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China – CFTG Rebuttal to Harmoni Request to Reject CFTG’s Questionnaire Response (QR),” dated October 10, 2019; Petitioners’ Letter, “24th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China – Petitioners’ Second Request for Partial Rescission,” dated November 15, 2019; Harmoni’s Letter, “Harmoni’s Request that the Department Reject the CFTG’s September 17, 2019 Submission unless the CFTG agrees to remove double bracketing of four lines of its response in the 24th Administrative Review of Antidumping Duty Order on Fresh Garlic from the People’s Republic of China,” dated December 4, 2019; CFTG’s Letter, “24th Administrative Review of Fresh Garlic from the People’s Republic of China – Response to the FGPA November 15, 2019 Letter and Second Request that Department Determine the FGPA Lacks Standing to File Comments and therefore Reject the November 15 letter – filed on behalf of the CFTG,” dated December 6, 2019; CFTG’s Letter, “24th Administrative Review of Fresh Garlic from the People’s Republic of China – Response to the Harmoni December 4, 2019 Letter – filed on behalf of the CFTG,” dated December 10, 2019; and CFTG’s Letter, “24th Administrative Review of Fresh Garlic from the People’s Republic of China – Pre-Preliminary Determination Comments – filed on behalf of the CFTG,” dated December 31, 2019.

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018 through the resumption of operations on January 29, 2019.³⁴ If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the preliminary results, after tolling, was September 11, 2019. On August 23, 2019, Commerce extended the deadline for the preliminary results of this review.³⁵ The revised deadline for the preliminary results is now January 9, 2020.

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: 0703.30.0005, 0703.20.0000, 0703.20.0010, 0703.20.0015, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, 0711.90.6500, 2005.90.9500, 2005.90.9700, and 2005.99.9700, 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), Commerce will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. On June 11, 2019, all review requests

³⁴ See Memorandum, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

³⁵ See Memorandum, "Fresh Garlic from the People's Republic of China – 24th Administrative Review (2017-2018): Extension of Deadline for the Preliminary Results of the Review," dated August 23, 2019 (Prelim Extension Memorandum).

were timely withdrawn for eight companies.³⁶ Therefore, we are rescinding this administrative review with respect to those eight companies.³⁷

Preliminary Rescission of Administrative Review

In addition, as discussed below, Commerce has preliminarily determined that the material misrepresentations and inconsistencies in the statements made by the CFTG and Roots Farm, make all of the submissions of the CFTG and Roots Farm unreliable. Accordingly, Commerce has preliminarily determined that the CFTG's and Roots Farm's review requests were invalid and is preliminarily rescinding the review with respect to 19 companies.³⁸

During the course of an administrative review, Commerce issues questionnaires and solicits information from interested parties. These responses become the basis of the administrative record, solely upon which Commerce relies for its preliminary and final results. In other words, Commerce's rationale underlying its determinations and results is based exclusively on record evidence submitted by, and certified by, interested parties. Commerce acts within its expertise and discretion when it considers directly conflicting evidence and decides which evidence to credit.³⁹ As noted above, interested parties have submitted extensive information regarding the credibility of the CFTG and Roots Farm.

1. Credibility Analysis in Previous Administrative Proceedings

Although each proceeding is distinct,⁴⁰ the fact pattern of the instant administrative review mirrors that of two prior reviews – the 21st and 22nd administrative reviews – and accordingly, the prior reviews provide context to the analysis of the CFTG's standing and credibility. We detail these findings below for context.

³⁶ See Petitioners Letter, "24th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – Petitioners' Partial Withdrawal of Review Request," dated June 11, 2019 (Petitioners' Withdrawal of Requests).

³⁷ See *Fresh Garlic from the People's Republic of China: Preliminary Results, Preliminary Rescission, and Final Rescission, in Part, of the 24th Antidumping Duty Administrative Review; 2017-2018*, at Appendix 1 (dated concurrently with this memorandum) (*Preliminary Results*). In addition, the petitioners and Harmoni each withdrew their review requests for Harmoni. See Petitioners' Withdrawal of Requests; and Harmoni's Letter, "Harmoni Withdrawal of Review Request: Twenty-Fourth Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China (A-570-831)," dated June 3, 2019.

³⁸ The nineteen companies for which Roots Farm and CFTG made the only non-withdrawn review requests are: (1) Hebei Golden Bird Trading Co., Ltd.; (2) Jinxiang Guihua Food Co., Ltd.; (3) Jinxiang Infang Fruit & Vegetable Co., Ltd.; (4) Jinxiang Kingkey Trade Co., Ltd.; (5) Jining Yongjia Trade Co., Ltd.; (6) Jinxiang Changwei Agricultural Products Co., Ltd.; (7) Jinxiang Dingyu Agricultural Products Co., Ltd.; (8) Jinxiang Fitow Trading Co., Ltd.; (9) Jinxiang Hejia Co., Ltd.; (10) Jinxiang Honghua Foodstuff Co., Ltd.; (11) Jinxiang Wanxing Garlic Products Co., Ltd.; (12) Qingdao Doo Won Foods Co., Ltd.; (13) Qingdao Joinseafoods Co., Ltd.; (14) Shandong Chengwu Longxing Farm Produce & By-Product Co., Ltd.; (15) Weifang Hongqiao International Logistics Co., Ltd.; (16) Xinjiang Longping Hongan Xiwannian Chili Products Co., Ltd.; (17) Yantai Jinyan Trading, Inc.; (18) Harmoni; and (19) Zhengzhou Yudishengjin Farm Products Co., Ltd.

³⁹ See *Zhengzhou Harmoni Spice Co. v. United States*, 617 F. Supp. 2d 1281, 1288 (CIT 2009) (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.").

⁴⁰ See, e.g., *E.I. DuPont de Nemours & Co. v. United States*, 22 C.I.T. 19, 32 (January 29, 1998).

A. 21st Administrative Review

In the 21st 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.⁴¹ As discussed in the final results of the 21st administrative review, based on the material misrepresentations and inconsistent statements made by the members of the NMGGC, Commerce found that substantial record evidence undermined the veracity of all the NMGGC's submissions to Commerce.⁴² In order to evaluate the credibility of the NMGGC, Commerce analyzed three factual claims that exemplified the contradictory nature of the NMGGC's submissions and tied these factual claims to the record evidence that refuted them.⁴³

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 21st review; and (3) Mr. Crawford withdrew his review request of Harmoni in the 20th administrative review because he was intimidated by a private investigator sent by Harmoni.⁴⁴ Commerce's analysis explained how each of these factual claims was contradicted by other, more reliable, record evidence.⁴⁵

With regard to the first claim, Commerce 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 Commerce review Harmoni. In the {21st administrative} review, these efforts took the form of the NMGGC's review request."⁴⁶ Concerning the NMGGC's second claim, Commerce 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.⁴⁷ Regarding the third claim, Commerce referred to the contradictory statements made by Mr. Crawford and Mr. Hume which 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.⁴⁸

Based on the inconsistencies and material misrepresentations made by the NMGGC – supported by the three refuted factual claims – Commerce found that the NMGGC lacked credibility and

⁴¹ The NMGGC's review request included Harmoni and Jinxiang Jinma Fruits and Vegetables Products Co., Ltd. (Jinxiang Jinma).

⁴² See *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 Issues and Decision Memorandum (IDM) at 7-23.

⁴³ See *Garlic 21 Final* IDM at 17-23.

⁴⁴ *Id.* at 18.

⁴⁵ *Id.* at 17-23.

⁴⁶ *Id.* at 18-20.

⁴⁷ *Id.* at 20-21.

⁴⁸ *Id.* at 21.

that none of its submissions could be used in order to make a determination regarding the NMGGC's status as a domestic interested party.⁴⁹ Furthermore, because the NMGGC did not have status as a domestic interested party, Commerce found that the NMGGC's review request was invalid *ab initio*, and rescinded the review with respect to Harmoni and Jinxiang Jinma.⁵⁰

B. 22nd Administrative Review

In the 22nd administrative review, the CFTG, composed of Mr. Katz, Mr. Crawford, Suzanne Sanford, and Alex Pino at the time of its review request, requested a review of 17 garlic exporters.⁵¹ As discussed in the final results of the 22nd administrative review, based on the material misrepresentations and inconsistent statements made by the members of the CFTG at the time of the submission of the review request, Commerce found that substantial record evidence undermined the veracity of all the CFTG's submissions to Commerce.⁵² In order to evaluate the credibility of the CFTG, Commerce analyzed four factual claims that exemplified the contradictory nature of CFTG's submissions and tied these factual claims to the record evidence that refuted them.⁵³

Specifically, the members of the CFTG made the following claims, which were ultimately contradicted by other, more reliable, record evidence.⁵⁴ Commerce's analysis explained how each of these factual claims was contradicted by other, more reliable, record evidence.⁵⁵

(1) Payments made to Mr. Crawford from Mr. Hume were made from Mr. Hume's personal bank account.

Hume and Associates LLC (H&A)'s accounting records indicate that Mr. Hume's firm recorded a \$50,000 payment to Mr. Crawford as a business expense under "independent contractors."⁵⁶

⁴⁹ See *Garlic 21 Final IDM* at 7-23.

⁵⁰ *Id.*

⁵¹ 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 Preliminary Results of the New Shipper Reviews; 2015-2016*, 82 FR 57718 (December 7, 2017) (*Garlic 22 Prelim*), and accompanying Preliminary Decision Memorandum (PDM) at 9, unchanged in *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 23.

⁵² Mr. Pino and Mr. Katz withdrew membership from the CFTG following the timely submission of a review request. Of the four original requesting members party to the CFTG's review request, Commerce only received responses from Mr. Crawford and Ms. Sanford, and accordingly, only analyzed these responses with respect to the CFTG's credibility. See *Garlic 22 Prelim PDM* at 7-13, unchanged in *Garlic 22 Final IDM* at 22-24.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

(2) *Mr. Crawford received no remuneration or equipment gratis during 2015 and 2016.*

Mr. Crawford received the aforementioned remuneration from Mr. Hume regarding the 20th administrative review of garlic in March 2015. In addition, Mr. Crawford admitted to receiving remuneration, in the form of compensation for a trip to China, in July of 2015.⁵⁷

(3) *Ms. Sanford was unable to provide income tax statements because of a fire on Ms. Sanford's property.*

Public documents and a private investigator's sworn statement 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 Commerce with her 2015 tax returns.⁵⁸ The deadline for filing tax returns for 2015 was April 2016, nearly a year after the fire at issue.⁵⁹ 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.⁶⁰

(4) *Ms. Sanford sold garlic in 2016 at the Taos Farmer's Market.*

Ms. Sanford was never registered as a vendor, nor was she recognized by the manager of the market.⁶¹

Based on the inconsistencies and material misrepresentations made by the CFTG – supported by the four refuted factual claims – Commerce found that the CFTG lacked credibility and that none of its submissions could be used in order to make a determination regarding the CFTG's status as a domestic interested party.⁶² Furthermore, because the CFTG did not have status as a domestic interested party, Commerce found that the CFTG's review request was invalid *ab initio*, and rescinded the review with respect to the companies for which only the CFTG submitted a review request.⁶³

2. Credibility Analysis in the 24th Administrative Review

A. The CFTG

In the instant review, the CFTG, comprised of Mr. Crawford, Ms. Sanford, and Rowan Bateman, requested that Commerce review 22 garlic exporters.⁶⁴ The CFTG indicated that its review

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ 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. The CFTG's submission stated that "{t}he individual

request was filed in accordance with 19 CFR 351.213(b)(1), the subsection of Commerce’s regulations which outlines the rules regarding administrative reviews from domestic interested parties and foreign governments.⁶⁵ As noted above, Commerce issued a questionnaire to the members of the CFTG seeking further information and documentation to confirm that the members of the CFTG were interested parties pursuant to section 771(9) of the Act, and, thus, have standing to request a review under this subsection.⁶⁶ Mr. Crawford, Ms. Sanford, and Mr. Bateman⁶⁷ submitted responses to Commerce’s questionnaire.⁶⁸ In these responses, each member of the CFTG claimed to be a domestic interested party in accordance with section 771(9)(C) of the Act.⁶⁹

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.” The term “producer” is not defined in the Act, and Commerce 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.⁷⁰ Commerce here again reiterates this explanation. 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, Commerce must nevertheless satisfy itself that a domestic producer’s submissions and claims of standing are credible and supported by substantial evidence.

The issue of the CFTG’s members’ credibility is germane to each member’s claim to have standing in this review. We note that much of the extensive factual information with respect to Mr. Crawford’s and Ms. Sanford’s credibility – including the numerous affidavits, declarations, email communications, and narrative submissions upon which Commerce relied in making our determinations in the *Garlic 21 Final* and *Garlic 22 Final* – is on the record of this review.⁷¹ We continue to find, based on this record evidence from these previous reviews, now on the record of the instant review, that Mr. Crawford’s and Ms. Sanford’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 and Ms. Sanford in the instant review casts further doubt on each individual’s credibility. In addition, we also find that Mr. Bateman’s submissions and statements contain material misrepresentations, inconsistencies, and deficiencies, calling into question his credibility. We explain below, in turn, the material misrepresentations,

members of the CFTG are Rowan Bateman, manager of Morningstar Farm, Arroyo Seco, New Mexico; Stanley Crawford, owner and operator of El Bosque Garlic Farm, Dixon, New Mexico; and Suzanne Sanford, owner and operator of Sanford Farm of Costilla, New Mexico.” See CFTG’s Letter, “24th Antidumping Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China – Request for Administrative Review Filed on Behalf of the CFTG and its Individual Members,” dated November 28, 2018 (CFTG’s Review Request).

⁶⁵ See 19 CFR 351.213(b)(1).

⁶⁶ See CFTG Standing Questionnaire.

⁶⁷ Mr. Bateman submitted his response on behalf of Morning Star (also referred to as Morningstar) Farm, owned by his mother, Melinda Bateman. See CFTG’s January 6, 2020 QR at Exhibits 13-18.

⁶⁸ *Id.*

⁶⁹ *Id.* at 12.

⁷⁰ See, e.g., *Garlic 22 Prelim* PDM at 10, unchanged in *Garlic 22 Final* IDM at 22-24; see also *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 IDM at Comment 1.

⁷¹ See AR21-22 Documents; see also *Garlic 21 Final* IDM; and *Garlic 22 Final* IDM.

inconsistencies, and deficiencies in the statements and submissions made by each of the members of the CFTG.

a. Claims regarding remuneration to Mr. Crawford

In Mr. Crawford's standing questionnaire response, he stated that "{i}n March 2015, after I withdrew my review request in the Garlic 20 AR, I received a *gift* of \$50,000 from Mr. Hume."⁷² In addition, in a declaration accompanying the CFTG's standing questionnaire response, Mr. Hume declared that "{i}n March 2015 I paid Mr. Crawford \$50,000 after Mr. Crawford withdrew his review request in connection with the Garlic 20 AR. This payment was made from my personal bank account and was not reimbursed by any Chinese entity."⁷³ Contrary to the claims made by Mr. Hume and Mr. Crawford, 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."⁷⁴ Rather than giving Mr. Crawford a gift of \$50,000 from a personal account, as Mr. Hume again certified,⁷⁵ the payment was made from H&A's account and booked as an expense to the firm.

b. Claims regarding remuneration to Ms. Sanford

In Mr. Crawford's standing questionnaire response, he reported loaning Ms. Sanford money in March 2018 to assist in increasing her garlic production.⁷⁶ However, when Commerce requested that Sanford report any and all remuneration received from any member of the CFTG, Ms. Sanford stated, "{t}he only financial arrangements I have had with any other member of the CFTG consisted of my selling seed garlic to Stanley Crawford in 2017 and 2018 {...} and my paying Mr. Crawford {...} for helping me plant garlic 2016."⁷⁷ Although Mr. Crawford reported loaning Ms. Sanford money, Ms. Sanford stated that, "I was promised no loans from 2015 to present."⁷⁸

c. Claims regarding Mr. Bateman's employment

The CFTG's submissions state that Rowan Bateman is a manager of Morning Star Farm.⁷⁹ In addition, the CFTG's submissions of factual information are accompanied by company certifications, in accordance with 19 CFR 351.303(g), which indicate that Mr. Bateman is the manager of Morning Star Farm.⁸⁰

⁷² See CFTG's January 20, 2020 QR at Exhibit 3 (emphasis added).

⁷³ *Id.* at Exhibit 1.

⁷⁴ See AR21-22 Documents at Document IV.

⁷⁵ See CFTG's January 20, 2020 QR at Exhibit 1.

⁷⁶ The amount of the loan between Mr. Crawford and Ms. Sanford is proprietary. See CFTG's January 20, 2020 QR at Exhibit 3 and CFTG's Credibility Analysis Memorandum.

⁷⁷ See CFTG's January 20, 2020 QR at Exhibit 19.

⁷⁸ *Id.*

⁷⁹ The CFTG's submission stated that "{t}he individual members of the CFTG are Rowan Bateman, manager of Morningstar Farm, Arroyo Seco, New Mexico, Stanley Crawford, owner and operator of El Bosque Garlic Farm, Dixon, New Mexico; and Suzanne Sanford, owner and operator of Sanford Farm of Costilla, New Mexico." See, e.g., CFTG's Review Request; and CFTG's January 20, 2020 QR.

⁸⁰ See, e.g., CFTG's Review Request; and CFTG's January 20, 2020 QR.

In the standing questionnaire, Commerce requested that the CFTG report and document the number of persons employed by each constituent member of the CFTG in the production, packaging, and sales of garlic for the POR. Mr. Bateman's response stated, "{ }we had 1 employee, my mother, Melinda Bateman."⁸¹ Mr. Bateman's response did not indicate that he, Rowan Bateman, was employed in the production, packaging, or sales of garlic for the POR.⁸² Thus, Mr. Bateman's repeated claim to be a manager of Morning Star Farm is contradicted by his narrative response to Commerce's standing questionnaire, which indicates that he is not even an employee of Morning Star Farm.

Further, 19 CFR 351.303(g) outlines the requirements for certifications accompanying submissions of factual information. Section 351.303(g)(1) requires that the person officially responsible for presentation of the factual information certify that: "I, (PRINTED NAME AND TITLE), *currently employed by* (COMPANY NAME), certify that I prepared or otherwise supervised the preparation of the attached submission."⁸³

Mr. Bateman's company certifications state, in part, "I, Rowan Bateman, a manager of Morning Star Farm, Arroyo Seco, New Mexico, certify that I reviewed on September 13, 2019, the information related to my farm for the September 19, 2019 submission filed on behalf of the Coalition for Fair Trade in Garlic (CFTG)."⁸⁴ Notably, the text of Mr. Bateman's company certification specifically omits the language relating to his current employment with Morning Star Farm. To be clear, we do not mean to suggest that certifications which include language that deviates from the proposed language in 19 CFR 351.303(g) are necessarily invalid. Rather, the specific omission of the language referring to the current employment status of Mr. Bateman, amid conflicting record evidence regarding his employment status with Morning Star Farm, calls into question the veracity of statements made by Mr. Bateman on the administrative record.

d. Claims regarding seed purchases by Mr. Crawford

Mr. Crawford claimed that he purchased a certain quantity of seed garlic from Ms. Sanford. However, his income tax statements contradict this claim. Because of the business proprietary nature of the claim and the documents which contradict them, we discuss this issues in a separate proprietary memorandum.⁸⁵

⁸¹ See CFTG's January 20, 2020 QR at Exhibit 13.

⁸² *Id.*

⁸³ See 19 CFR 351.303(g)(1)(i) (emphasis added).

⁸⁴ The language for the company certifications for each of the CFTG's members deviates from the requisite language of 19 CFR 351.303(g)(1)(i). However, the deviated language is particularly concerning with respect to Mr. Bateman's submissions, which also contain contradictory statements regarding his status as an employee of Morning Star Farm. See, e.g., CFTG's January 20, 2020 QR at Company Certifications.

⁸⁵ See Memorandum, "24th Administrative Review of Fresh Garlic from the People's Republic of China: CFTG Standing Analysis," dated concurrently with this memorandum (CFTG's Credibility Analysis Memorandum).

e. Inability to provide requested documentation

In addition to the contradictory factual statements discussed above, Ms. Sanford, Mr. Crawford, and Mr. Bateman each failed to provide complete responses to Commerce's standing questionnaire. For example, Commerce requested that each member of the CFTG submit a copy of the income tax returns filed with the IRS in 2016, 2017, and 2018, including a copy of the accompanying Schedule F for each year.⁸⁶ We also requested that each member provide a copy of any extension filed with the IRS, if applicable. In the CFTG's response, Mr. Bateman failed to submit the 2018 tax return and any accompanying schedules;⁸⁷ and Ms. Sanford failed to report her 2017 tax return and any accompanying schedules.⁸⁸

Furthermore, Commerce requested that each member of the CFTG provide documentary evidence of the quantity and value of fresh garlic planted, harvested, and sold during the POR by each of the members of the CFTG. In response, neither Ms. Sanford nor Mr. Bateman provided sales or production records of any kind.⁸⁹ In addition, Mr. Crawford provided irreconcilable, and in parts, illegible, production and sales documentation for the POR. To be clear, we do not mean to suggest that Mr. Bateman, Ms. Sanford, or Mr. Crawford's reported production and sales quantities or values are insufficient to qualify as domestic interested parties. Rather, the deficiencies in each individual's submissions, amid contradictory statements and material misrepresentations, further call into question the veracity of the submissions made by each member of the CFTG.

In sum, the question of the status of each of the members of the CFTG as "a domestic interested party" is fundamental to the CFTG's, or its constituent members', ability to request an administrative review of a Chinese exporter. These 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 AR. Commerce 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 CFTG's 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. Therefore, neither Ms. Sanford, Mr. Crawford, Mr. Bateman, nor the CFTG has standing pursuant to section 771(9)(C) of the Act. Accordingly, the CFTG's review request was invalid *ab initio*. In conclusion, Commerce is preliminarily rescinding the administrative review with

⁸⁶ A Schedule F accompanies the Form 1040 in order to report "profit or loss from farming." *See, e.g.*, CFTG's January 20, 2020 QR at Exhibit 4.

⁸⁷ Mr. Bateman reported Melinda Bateman's tax returns for 2016 and 2017, as requested, but failed to provide Melinda Bateman's 2018 tax return and any accompanying schedules. *See* CFTG's January 20, 2020 QR at Exhibit 13; and CFTG's Credibility Analysis Memorandum.

⁸⁸ *See* CFTG's January 20, 2020 QR at Exhibits 19-22.

⁸⁹ *Id.* at Exhibits 19-22.

respect to the 15 companies that were requested solely by the CFTG for which another valid review request was not made.

B. Roots Farm

In the instant review, Roots Farm requested that Commerce review four garlic exporters.⁹⁰ Roots Farm indicated that its review request was filed in accordance with 19 CFR 351.213(b)(1), the subsection of Commerce’s regulations which outlines the rules regarding administrative reviews from domestic interested parties and foreign governments.⁹¹ As noted above, Commerce issued a questionnaire to Roots Farm seeking further information and documentation regarding Roots Farm and confirmation that it is an interested party pursuant to section 771(9) of the Act, and thus, had standing to request a review under this subsection.⁹² Roots Farm submitted a response to Commerce’s questionnaire.⁹³ In this response, Roots Farm claimed to be a domestic interested party in accordance with section 771(9)(C) of the Act.⁹⁴

As noted above, 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.” We continue to note that although the term “producer” is not defined in the Act, Commerce 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.⁹⁵ We, once again, reiterate this explanation. Although we decline to set a particular level of production that a domestic producer must reach in order to have standing, we must nevertheless determine that a domestic producer’s submissions and claims of standing are credible and supported by substantial evidence. Thus, the issue of Roots Farm’s credibility is germane to its claim to have standing in this review. We preliminarily find that record evidence casts doubt on Roots Farm’s credibility. Specifically, we find that Roots Farm’s submissions and statements contain material misrepresentations, inconsistencies, and deficiencies, calling into question Roots Farm’s credibility. We explain, below, in turn, the material misrepresentations, inconsistencies, and deficiencies in the statements and submissions made by Roots Farm.

a. Claims regarding Roots Farm’s purchase and sale of U.S. garlic

Prior to Commerce’s issuance of the standing questionnaire, on April 26, 2019, Roots Farm submitted an invoice which purported to demonstrate that Roots Farm bought and processed “garlic grown in the {U.S.}” during the POR.⁹⁶ In a later submission, Roots Farm reaffirmed its claim that “Roots Farm grew, purchased, processed, and sold U.S. grown garlic during the

⁹⁰ See Roots Farm’s Letter, “24th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China – Request for Administrative Review Filed on Behalf of Roots Farm Inc,” dated November 30, 2018.

⁹¹ See 19 CFR 351.213(b)(1).

⁹² See Roots Farm Standing Questionnaire.

⁹³ See Roots Farm’s September 19, 2019 QR.

⁹⁴ *Id.* at 2.

⁹⁵ See, e.g., *Garlic 22 Prelim PDM* at 10, unchanged in *Garlic 22 Final IDM* at 22-24; see also *Activated Carbon IDM* at Comment 1.

⁹⁶ See Roots Farm’s April 26, 2019 Letter at 8.

POR,” referring to the invoice submitted on April 26, 2019.⁹⁷ In addition, Roots Farm argued that it had standing to request a review, because, unlike the *Garlic 21 Final*, in this case, there were no “falsified documents.”⁹⁸ For each submission, in accordance with 19 CFR 351.303(g)(1), the CEO of Roots Farm, Mingju Xu, certified that Roots Farm’s submissions of factual information were “accurate and complete to the best of {his} knowledge.”⁹⁹

On May 29, 2019, amid allegations that Roots Farm altered the invoice’s sale and ship date to support its claim that it purchased U.S. grown garlic during the POR, Roots Farm stated: “Roots Farm takes great offense at, and categorically denies Harmoni’s allegations. The allegations have no factual basis {...} Roots Farm has presented factually correct information to {Commerce}.”¹⁰⁰ Further, Roots Farm indicated that it had not participated in any alteration of the invoice, but rather, that it “submitted the document as it was received.”¹⁰¹ In the same submission, Roots Farm indicated that “Harmoni’s allegation about alterations {...} state the obvious, but miss the relevant question: when {(sic)}.” and that the invoice “was altered, but before Roots Farm received it.”¹⁰² Roots Farm admitted that the invoice it provided to Commerce – and for which it certified accuracy – was obviously altered.¹⁰³

On the same day, Harmoni submitted a copy of the original invoice from Roots Farm’s U.S. garlic supplier which showed a different sale and ship date than the version of the invoice submitted by Roots Farm.¹⁰⁴ Further, record information demonstrates that Roots Farm’s U.S. garlic supplier altered the invoice at Roots Farm’s request.¹⁰⁵

Accordingly, Roots Farm’s CEO, Mr. Xu, was aware of the invoice’s alteration when Roots Farm submitted its April 26, 2019 submission in which Mr. Xu certified that the submission was “accurate and complete to the best of {his} knowledge.”¹⁰⁶ Further, although Mr. Xu certified the accuracy and completeness of the submissions which contained the following statements, he was aware that the statements were contrary to fact: (1) Roots Farm purchased and sold U.S.-grown garlic *during the POR*;¹⁰⁷ (2) there were no “falsified documents” that would impede Roots Farm’s standing to request a review;¹⁰⁸ and (3) the invoice “was altered, but before Roots Farm received it.”¹⁰⁹

⁹⁷ See Roots Farm’s May 29, 2019 Letter at 2-3 (citing Roots Farm’s April 26, 2019 Letter at 8).

⁹⁸ See Roots Farm’s April 26, 2019 Letter at 13.

⁹⁹ *Id.* at Company Certification; and Roots Farm’s May 29, 2019 Letter at Company Certification.

¹⁰⁰ See Roots Farm’s May 29, 2019 Letter at 2.

¹⁰¹ *Id.* at 3.

¹⁰² *Id.* at 3, 6.

¹⁰³ *Id.* at 3.

¹⁰⁴ See Harmoni’s May 29, 2019 Letter at Attachment; and Harmoni’s June 6, 2019 Letter 2-5 and Exhibits 1 and 2.

¹⁰⁵ See Harmoni’s June 6, 2019 Letter at 5. For a full proprietary discussion of this issue, see Memorandum, “24th Administrative Review of Fresh Garlic from the People’s Republic of China: Roots Farm Standing Analysis,” dated January 9, 2019.

¹⁰⁶ See Roots Farm’s April 26, 2019 Letter at Company Certification; and Roots Farm’s May 29, 2019 Letter at Company Certification.

¹⁰⁷ See Roots Farm’s April 26, 2019 Letter at 8; and Roots Farm’s May 29, 2019 Letter at 2.

¹⁰⁸ See Roots Farm’s April 26, 2019 Letter at 13.

¹⁰⁹ See Roots Farm’s May 29, 2019 Letter at 3, 6 (*sic*).

b. Claims that Roots Farm “lawfully operates”

On April 8, 2019, Harmoni alleged that Roots Farm operated in contravention to local and federal law and submitted evidence of numerous citations and violations pertaining to Roots Farm’s Schuylkill County, Pennsylvania facility.¹¹⁰ With evidence of the violations on the record of the administrative review, on April 26, 2019, Roots Farm stated: “Roots Farm conducted its operations with appropriate certificates, or permissibly with applications pending, and has applied for additional certificates as its operations grew” and that “Roots Farm has required approvals and licenses, and lawfully operates its garlic production business.¹¹¹ In addition, Roots Farm stated, “Roots Farm incorporated in late 2015, and in January 2016 acquired an occupancy permit authorizing occupancy of the office and other parts of the facility for business purposes.”¹¹²

According to a September 11, 2019 court injunction from the Court of Common Pleas of Schuylkill County, Pennsylvania (the Pennsylvania Court):

{Th}e evidence showed that *since 2017, {Roots Farm} has been notified numerous times* that it is in violation of Pine Grove Township’s ordinance adopting the Uniform Construction Code; that it has ignored stop work orders posted on the property by the Township’s Building Code Office; that it has pled guilty or been found guilty of these violations numerous times at the Magistrate District Court level, and paid numerous fines, yet {Roots Farm} has continued to operate its commercial garlic plant at the property *without an occupancy permit* and without allowing the Building Code Officer to inspect its production facility.” {...}

“{Roots Farm} has had numerous opportunities *over the past two years* to remedy the nine violations identified by the Township, many of which concern the safety of {Roots Farm’s} employees, such as the building having a working sprinkler system and employees standing in water while operating electrical equipment, yet has failed to remedy the violations, allow inspections or *obtain the required occupancy permit*, while continuing to operate its commercial garlic processing operation.”¹¹³

The Pennsylvania Court’s findings are backed by evidence on this administrative record. For example, on April 11, 2017, Roots Farm received a “Stop Work Order”; on April 18, 2017, Roots Farm was notified of nine violations of the Uniform Construction Code of Pennsylvania, including operating without a valid certificate of occupancy; on November 30, 2017, Roots Farm received notification that its facility was unsafe, and that occupancy was prohibited; on February 12, 2018, Roots Farm received an “order to vacate”; and between February 23 and November 30, 2018, Roots Farm was cited nine times for operating without a certificate of occupancy.¹¹⁴ Each

¹¹⁰ See Harmoni’s April 8, 2019 Letter.

¹¹¹ See Roots Farm’s April 26, 2019 Letter at 7-8.

¹¹² *Id.* at 8-9.

¹¹³ See Harmoni’s Rebuttal to Roots QR at Exhibit 7 (emphasis added).

¹¹⁴ See Harmoni’s April 8, 2019 Letter at Exhibits G to I, L to M; and Roots Farm’s May 6, 2019 Letter at Attachment 2, Exhibit B.

of these notifications preceded Roots Farm’s claim that it “has required approvals and licenses, and lawfully operates its garlic production business.”¹¹⁵ Further, the Pennsylvania Court’s statements contradict Roots Farm’s claim that it “conducted its operations with appropriate certificates, or permissibly with applications pending, and has applied for additional certificates as its operations grew.”¹¹⁶

To be clear, we do not mean to suggest that a company or individual’s noncompliance with applicable local regulations and ordinances necessarily disqualifies that company or individual for domestic interested party status, pursuant to section 777(C)(9) of the Act. Rather, Roots Farm’s repeated material misrepresentations and inconsistent statements regarding its claims to be operating in full compliance with applicable regulations and ordinances, amid contradictory record evidence, in addition to the other misrepresentations on the record, further calls into question the veracity of the submissions made by Roots Farm.

c. Claims regarding sales, purchase, and other business records

On several occasions, Roots Farm referenced burglaries at its facility as reason for its inability to provide Commerce with certain requested information. For example, Roots Farm reported:

- “The Roots Farm facility has been broken into and suffered burglaries on multiple occasions. { ... } Burglars have mostly engaged in corporate espionage, taking computers and paper files containing sales records, purchase records, and other business records.”¹¹⁷
- “On June 12, 2017, our facility was burglarized. The burglars broke into our office, and took tools, employees’ uniforms, boots and masks. { ... } On September 17-18, 2017, our facility was burglarized again. This time the burglars took tools, checks, and computer equipment. { ... } We had subsequent burglaries in which we lost Sandy (our guard dog), company safe, sales documents, computer equipment, Customs/import documents, sales records, our paper copies of the Incident Reports, our hidden security cameras, surveillance video saved locally, and garbage.”¹¹⁸
- “Roots Farm has suffered multiple break-ins where burglars took Roots Farm corporate information (paper files - something no small-town burglar looking for valuables would take), as well-as hidden security cameras, data storage devices, and even Roots Farm’s guard dog, Sandy.”¹¹⁹
- “Several boxes of older files were burgled from Roots Farm’s Pine Grove facility, as discussed in our April 26, 2019 filing. { ... } Roots Farm and affiliated companies do not have all paper files from the time periods responsive to {Commerce}’s information requests. Roots Farm has been able to recreate some of those files from electronic

¹¹⁵ See Roots Farm’s April 26, 2019 Letter at 8.

¹¹⁶ *Id.* at 7-8.

¹¹⁷ *Id.* at 10-11.

¹¹⁸ *Id.* at Exhibit 7.

¹¹⁹ See Roots Farm’s May 3, 2019 Letter at 3.

records, including files and archived emails, and has been able to submit some information previously.”¹²⁰

- “Roots Farm has not been able to find in files (that were not burgled) copies of applications for {USDA, FDA, and PDA} licenses ...”¹²¹
- “Roots Farm’s facilities stored purchase records for some of its affiliates, and several boxes of corporate files were burgled from Roots Farm’s offices. Purchase records responsive to this question were among the papers burgled from Roots Farm, and Roots Farm has not been able to find relevant data in its email systems.”¹²²

However, the police reports relating to the burglaries of Roots Farm do not support Roots Farm’s assertion that its computer equipment, sales, production, or files of any sort were stolen from its facility. Specifically, the record contains a sworn declaration from a private investigator which indicates that, for the incident reports referenced by Roots Farm, Roots Farm reported to the Pennsylvania Highway Patrol a “spool of wire” stolen on June 12, 2017 and “business/personal check, {a} trail camera, and tools” stolen between September 17 and 18, 2017.¹²³ Further, the private investigator’s declaration indicates that the Pennsylvania Highway Trooper involved in the investigation of the burglaries stated that none of the reported burglaries included a company safe, sales documents, computer equipment, Customs/import documents, sales records, paper copies of incident reports, hidden cameras, surveillance videos, garbage, or a guard dog.¹²⁴ Accordingly, Roots Farm’s claim to have been unable to provide certain information as the result of the theft of certain items is directly contradicted by record evidence.

In sum, the question of Roots Farm’s status as “a domestic interested party” is fundamental to its ability to request an administrative review of a Chinese exporter. The examples above demonstrate the repeated inconsistencies in Roots Farm’s record submissions, and the multiple contradictions between Roots Farm’s claims and record evidence. Furthermore, these examples demonstrate that none of Roots Farm’s submissions and claims can be used as a reliable basis for reaching a determination that Roots Farm is a “domestic interested party” that can request an administrative review. Commerce has preliminarily concluded that Roots Farm’s inability to provide complete and accurate responses, and its material misrepresentations and omissions, taint all the statements and information that it has submitted on the record of this review. Most importantly, the numerous contradictions in the record evidence, including the contradictions and misrepresentations within the September 19, 2019 questionnaire response, taint the September 19, 2019 questionnaire response in which Roots Farm provided its production and business information to support its claim for “domestic interested party” status. Because we determine that the entirety of Roots Farm’s information, including its purported garlic production information, is unusable, we find that Roots Farm has failed to demonstrate that it is a domestic interested party. Accordingly, its review request was invalid *ab initio*. In conclusion, Commerce

¹²⁰ See Roots Farm’s Letter, “Fresh Garlic from the People’s Republic of China Antidumping Administrative Review: Request for Extension of Time to Respond to Standing Questionnaire,” dated August 28, 2019.

¹²¹ See Roots Farm’s September 19, 2019 QR at 20.

¹²² *Id.* at 25.

¹²³ See Harmoni’s Rebuttal to Roots QR at Exhibit 1.

¹²⁴ *Id.*

is preliminarily rescinding the administrative review with respect to the companies that were requested solely by Roots Farm for which another valid review request was not made.

V. PRELIMINARY DETERMINATION REGARDING THE “NO SHIPMENTS” COMPANY

As discussed in the background section above, Infang timely filed a “no shipment” certification stating that, besides the shipment subject to the now-completed new shipper review (NSR),¹²⁵ it had no entries of subject merchandise during the POR.¹²⁶ No record evidence contradicted Infang’s claim of no shipments during the POR. Based on the certification by Infang and our analysis of CBP information, we preliminarily determine that Infang, listed in Appendix III of the accompanying preliminary results *Federal Register* notice, did not have any reviewable transactions during the POR.

However, as noted above, the review request for Infang was found to be invalid *ab initio* due to the material misrepresentations and inconsistencies found in statements and submissions made by the CFTG. Accordingly, Commerce is preliminarily rescinding the review with respect to Infang.

VI. DISCUSSION OF THE METHODOLOGY

Non-Market Economy Status

Commerce considers China to be an NME country.¹²⁷ 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 Commerce. Therefore, we continue to treat China as an NME country for purposes of these preliminary results.

Separate Rate Determination

In the *Initiation Notice*, Commerce notified parties of the application process by which exporters and producers may apply for separate rate status in NME reviews.¹²⁸ In proceedings involving NME countries, Commerce has a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assessed at a single AD rate.¹²⁹ It is Commerce’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

¹²⁵ See *Fresh Garlic from the People’s Republic of China: Final Results of the Semiannual Antidumping Duty New Shipper Review of Jinxiang Infang Fruit & Vegetable Co., Ltd.*, 84 FR 61023 (November 12, 2019).

¹²⁶ See Infang’s No Sales Certification.

¹²⁷ 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).

¹²⁸ See *Initiation Notice*.

¹²⁹ See Policy Bulletin 05.1, Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries, dated April 15, 2005 (*Policy Bulletin 05.1*), available at <https://enforcement.trade.gov/policy/bull05-1.pdf>.

separate rate.¹³⁰ Exporters can demonstrate this independence through the absence of both *de jure* (in law) and *de facto* (in fact) governmental control over export activities.¹³¹ Commerce analyzes each entity's export independence under a test first articulated in *Sparklers* and as further developed in *Silicon Carbide*.¹³²

In order to demonstrate separate-rate status eligibility, Commerce 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.¹³³ For entities that were not assigned a separate rate in the previous segment, however, Commerce requires a separate rate application.¹³⁴

Separate Rate Applications and Certifications

As noted under the "Background" section of this memorandum, five companies timely submitted separate rate status certifications or applications. As discussed above, Harmoni and Goodman were selected as mandatory respondents, and Commerce is preliminarily rescinding the review with respect to Harmoni. The remaining timely-filed separate rate applications or certifications came from Feiteng, Sea-line, and Chengwu.

Each company certified that it had suspended entries during the POR.¹³⁵

1. Absence of *De Jure* Control

Commerce 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.¹³⁶

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

2. Absence of *De Facto* Control

Typically, Commerce 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

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² 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*).

¹³³ See *Initiation Notice*.

¹³⁴ *Id.*

¹³⁵ See Feiteng SRC; see also Sea-line SRC; and Chengwu SRC.

¹³⁶ See *Sparklers*, 56 FR at 20589.

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.¹³⁷ Commerce 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 Commerce from granting a separate rate.

The evidence placed on the record of the instant administrative review by Goodman, Feiteng, Sea-line, and Chengwu demonstrates an absence of *de facto* government control under the criteria identified in *Silicon Carbide* and *Sparklers*. Accordingly, Commerce has preliminarily determined that these three 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, Commerce 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 Goodman and Harmoni, the exporters accounting for the largest volume of imports of the subject merchandise, as the respondents in this review.¹³⁸

As discussed above, Feiteng, Sea-line, and Chengwu have demonstrated eligibility for a separate rate, but were not selected for individual examination in this review. The statute and Commerce's regulations do not directly address the establishment of a rate to be applied to companies not selected for individual examination where Commerce limited its examination in an AR pursuant to section 777A(c)(2) of the Act. Commerce'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.¹³⁹

In this review, Goodman is the only reviewed respondent that received a weighted-average margin. Therefore, Commerce preliminarily determines that Goodman's calculated weighted-average dumping margin of \$4.37 per kilogram will be assigned to Feiteng, Sea-line, and Chengwu.

¹³⁷ 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).

¹³⁸ See Respondent Selection Memorandum.

¹³⁹ 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).

Margin for Companies Not Receiving a Separate Rate

As noted above, we initiated administrative reviews for 33 producers/exporters of garlic, rescinded the reviews of eight producers/exporters, preliminarily rescinded the reviews of 19 producers/exporters, granted separate rates to three non-selected producers/exporters, and selected one remaining mandatory respondent. Additionally, two Chinese producers/exporters, Shandong Chenhe International Trading Co., Ltd. and Shandong Jinxiang Zhengyang Import & Export Co., Ltd., remain under review. Because these remaining two entities did not demonstrate their eligibility for separate rate status, Commerce finds that they have not rebutted the presumption of government control and, therefore, are considered to be part of the China-wide entity.

The China-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.¹⁴⁰ In NME proceedings, “‘rates’ may consist of a single dumping margin applicable to all exporters and producers.”¹⁴¹ As explained above in the “Separate Rates” section, all companies within China 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 operate freely with respect to their export activities.¹⁴² In this regard, no record evidence indicates that such government influence is no longer present or that our treatment of the China-wide entity is otherwise incorrect.

Commerce’s policy regarding conditional review of the China-wide entity applies to this review.¹⁴³ Under this policy, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the China-wide entity in this review, the entity is not under review, and the entity’s rate is not subject to change. As such, the China-wide rate from the previous review remains unchanged, and the China-wide entity is receiving a margin of \$4.71 per kilogram.¹⁴⁴

¹⁴⁰ The separate-rate application and certification are available at <http://enforcement.trade.gov/nme/nme-sep-rate.html>.

¹⁴¹ See 19 CFR 351.107(d).

¹⁴² 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 IDM at Comment 2.

¹⁴³ 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).

¹⁴⁴ *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).

Surrogate Country and Surrogate Value Data

On August 28, 2019, we sent interested parties a letter inviting comments on the concurrently released list of potential surrogate countries and primary surrogate country (SC) selection, as well as surrogate value (SV) data.¹⁴⁵ On September 9, 2019, in order to provide complete coverage for the POR of the instant review, Commerce placed the 2017 list of countries determined to be at a level of economic development comparable to that of China on the record of this review.¹⁴⁶

On August 23, 2019, Commerce extended the deadline for the preliminary results of the administrative review to January 9, 2020.¹⁴⁷ Pursuant to 19 CFR 351.301(c)(3)(ii), the deadline for submission of factual information to value factors of production (FOPs) was extended to December 10, 2019.

1. Surrogate Country Comments and Rebuttal Comments

On October 11, 2019, the petitioners submitted comments arguing that Commerce 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' FOPs.¹⁴⁸ Specifically, the petitioners argue that Romania is at a level of economic development similar to China and is a significant producer of garlic.¹⁴⁹ 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.¹⁵⁰

On October 11, 2019, Harmoni submitted comments outlining Commerce's practice and policy for the selection of surrogate countries and surrogate values.¹⁵¹ In that submission, Harmoni argued that Commerce should consider both net export volume and annual production volume when determining whether a country is a significant producer of comparable merchandise.¹⁵²

On October 21, 2019, the petitioners rebutted Harmoni's surrogate country comments.¹⁵³ In this submission, the petitioners argue that Commerce should continue its practice of relying on production data rather than trade statistics to determine if a country is a significant producer of comparable merchandise.¹⁵⁴ Additionally, the petitioners point out that the trade statistics

¹⁴⁵ See 2018 Surrogate Country List.

¹⁴⁶ See 2017 Surrogate Country List.

¹⁴⁷ See Prelim Extension Memorandum.

¹⁴⁸ See Petitioners' SC Comments at 2.

¹⁴⁹ *Id.* at 3-4, 10, and Exhibit FAO-1.

¹⁵⁰ *Id.* at 11-12.

¹⁵¹ See Harmoni's SC Comments at 2-3.

¹⁵² *Id.* at 4.

¹⁵³ See Petitioners' SC Rebuttal Comments.

¹⁵⁴ *Id.* at 3-4.

submitted by Harmoni include three HTS codes that consist largely of products other than fresh garlic, and therefore, the data are not representative of subject merchandise.¹⁵⁵

On December 24, 2019, the petitioners submitted supplemental SC and SV comments further arguing that Romania should be selected as the primary SC in this review.¹⁵⁶ Specifically, the petitioners argue that Romania continues to satisfy Commerce's SC selection criteria and provides the best available information to value the respondents' factors of production, even considering the existence of two country lists.

2. Surrogate Value Comments and Rebuttal Comments

The petitioners submitted monthly POR garlic bulb data sourced from the National Institute of Statistics of Romania (NISR), the 2017 financial statements from SC Boromir PROD S.A. (SC Boromir), a Romanian food company, tariff-specific data for direct and packing materials from the Global Trade Atlas (GTA), Eurostat electricity data, National Public Utility Regulation Authority (ANRSC) water data, World Bank truck freight, brokerage and handling data, and ocean freight data from Maersk Line.¹⁵⁷ In addition, the petitioners submitted the 2018 financial statement of SC Amylon SA (Amylon) a Romanian food company.¹⁵⁸

Goodman submitted the 2018 publicly-available financial statements of Industrias Bachoco, S.A.B. De C.V (Bachoco), a Mexican poultry company.¹⁵⁹ Goodman also submitted monthly garlic bulb data from the Mexican government's Agricultural Food and Fishing Information Service (SIAP) for November and December 2017, and February 2018, along with yearly garlic bulb data from the United Nations Food and Agriculture Organization Statistical Databases (FAOSTAT) for 2016-2018.¹⁶⁰ In the same submission, Goodman submitted tariff specific import data for direct and packing materials from the Trade Data Monitor (TDM).¹⁶¹ Finally, Goodman submitted National Water Commission water data, electricity data from the International Energy Agency (IEA), World Bank truck freight, brokerage, and handling data, and POR labor data from the National Institute of Statistic and Geography of Mexico.¹⁶²

On December 24, 2019, the petitioners submitted rebuttal comments on Goodman's SC and SV submissions.¹⁶³ The petitioners argued that Mexican garlic bulbs are not physically comparable to those used by the respondents in this instant review.¹⁶⁴ The petitioners also submitted declarations from a partner in a Mexican garlic business.¹⁶⁵ The petitioners submitted monthly

¹⁵⁵ *Id.* at 4.

¹⁵⁶ See Petitioners' Pre-Prelim Surrogate Comments.

¹⁵⁷ See Petitioners' Pre-Prelim SV Submission at Exhibits 1A, 1B, 2A, 2B, 3, 4A, 4B, 5A, 5B, 5C, and 6.

¹⁵⁸ See Petitioners' Final SV Submission at Exhibit 7.

¹⁵⁹ See Goodman's SV Submission at Exhibit SV-10 (we note that the financial statement is poorly translated in parts).

¹⁶⁰ *Id.* at Exhibits SV-3 and SV-2.

¹⁶¹ *Id.* at Exhibit SV-4.

¹⁶² *Id.* at Exhibits SV-5, SV-6, SV-7, SV-8, and SV-9.

¹⁶³ See Petitioners' Rebuttal SV Comments.

¹⁶⁴ *Id.* at 2-3 and Exhibits MEX-1 and MEX-2.

¹⁶⁵ *Id.* at Exhibit MEX-1.

Mexican import statistics arguing that Mexico lacks adequate cold storage for year-round garlic availability.¹⁶⁶ In addition, the petitioners submitted information showing that the pricing data in Mexico is limited in availability, along with information about the Mexican garlic market, and population data for Argentina, Chile, Peru, and Mexico.¹⁶⁷ Finally, the petitioners' submission contains information relating to certification requirements for garlic imported into Mexico, GTA and TDM garlic import and export statistics for Argentina, Chile, China, Mexico, Peru, and the United States, the public versions of Commerce's verification reports from the 17th and 18th administrative reviews, and excerpts from the International Trade Commission's (ITC) 4th sunset review of garlic from China.¹⁶⁸

Surrogate Country Analysis

When Commerce 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 market economy (ME) country or countries considered to be appropriate by Commerce. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, Commerce 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.¹⁶⁹ Reading sections 773(c)(1) and (c)(4) of the Act in concert, it is Commerce's practice to select an appropriate surrogate country based on the availability and reliability of data.¹⁷⁰ Commerce has identified Brazil, Mexico, Romania, Bulgaria, Turkey, Russia, Malaysia, and Kazakhstan, as countries with per capita GNI that are at the same level of economic development as China during the POR.¹⁷¹

A. Economic Comparability

Section 773(c)(4)(A) of the Act is silent with respect to how Commerce may determine that a country is economically comparable to the NME country. As such, Commerce's longstanding practice has been first to identify those countries which are at the same level of economic development as China based on per capita GNI data reported in the World Bank's World Development Report.¹⁷² We note that identifying potential surrogate countries based on GNI data has been affirmed by the CIT.¹⁷³

¹⁶⁶ *Id.* at Exhibit MEX-2.

¹⁶⁷ *Id.* at Exhibits MEX-3, FP-1, FP-2, FP-3, and POPULATION-1.

¹⁶⁸ *Id.* at Exhibits TRADE-1 through TRADE-7, VERIFICATION-1, VERIFICATION-2, ITC-1 and ITC-2.

¹⁶⁹ See Policy Bulletin 04.1, Non-Market Economy Surrogate Country Selection Process, dated March 1, 2004, (*Policy Bulletin 04.1*), available at <https://enforcement.trade.gov/policy/bull04-1.html>.

¹⁷⁰ *Id.*

¹⁷¹ See 2017 Surrogate Country List; see also 2018 Surrogate Country List.

¹⁷² 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 (April 7, 2014), and accompanying IDM at Comment I.a.

¹⁷³ See *Fujian Lianfu Forestry Co., Ltd. v. United States*, 638 F. Supp. 2d 1325 (CIT 2009).

As explained in Commerce's *Policy Bulletin 04.1*, "{t}he surrogate countries on the list are not ranked."¹⁷⁴ This absence of ranking reflects Commerce's long-standing practice that for the purpose of surrogate country selection, the countries on the list "should be considered equivalent"¹⁷⁵ from the standpoint of their level of economic development based on GNI as compared to China'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."¹⁷⁶ 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 enumerated above, Commerce identified Brazil, Mexico, Romania, Bulgaria, Turkey, Russia, Malaysia, and Kazakhstan, as countries with per capita GNI that are at the same level of economic development as China during the POR.¹⁷⁷ We consider all eight countries identified on the 2017 Surrogate Country List and 2018 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 China are given equal consideration for the purposes of selecting a surrogate country. As a general rule, Commerce 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.¹⁷⁸

B. Significant Producers of Comparable Merchandise

Section 773(c)(4)(B) of the Act requires Commerce to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor Commerce's regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, Commerce looks to other sources such as *Policy Bulletin 04.1* for guidance on defining comparable merchandise. *Policy Bulletin 04.1*

¹⁷⁴ See *Policy Bulletin 04.1*.

¹⁷⁵ *Id.*

¹⁷⁶ See section 773(c)(4) of the Act.

¹⁷⁷ See 2017 Surrogate Country List; see also 2018 Surrogate Country List.

¹⁷⁸ 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, 2003), and accompanying PDM 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).

states that “in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise.”¹⁷⁹ Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country.¹⁸⁰ Further, when selecting a surrogate country, the statute requires Commerce to consider the comparability of the merchandise, not the comparability of the industry.¹⁸¹ “In cases where the identical merchandise is not produced, Commerce must determine if other merchandise that is comparable is produced. How Commerce does this depends on the subject merchandise.”¹⁸² In this regard, Commerce 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.¹⁸³

Further, the statute grants Commerce discretion to examine various data sources for determining the best available information.¹⁸⁴ Moreover, while the legislative history provides that the term “significant producer” includes any country that is a “significant net exporter,”¹⁸⁵ it does not preclude reliance on additional or alternative metrics.

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

As noted below, there are no SV data or surrogate financial statements for Brazil, Bulgaria, Turkey, Russia, Malaysia, and Kazakhstan on the record of this review. Therefore, we preliminarily determine that 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, on this record, Commerce preliminarily considered whether Mexico and Romania are significant producers of comparable merchandise. Harmoni and the petitioners provided 2017 FAO garlic production data, which included Romania and Mexico.¹⁸⁶

¹⁷⁹ See *Policy Bulletin 04.1* at 2.

¹⁸⁰ *Id.* at n.6 (“{I}f 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.”).

¹⁸¹ See *Sebacic Acid from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 65674, 65676 (December 15, 1997) (“{T}o impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute.”).

¹⁸² See *Policy Bulletin 04.1* at 2.

¹⁸³ *Id.* at 3.

¹⁸⁴ See section 773(c) of the Act; see also *Nation Ford Chem. Co. v. United States*, 166 F. 3d 1373, 1377 (CAFC 1999).

¹⁸⁵ See Omnibus Trade & Competitiveness Act of 1988: Conference Report, H.R. Rep. No. 84-281, at 590 (1988).

¹⁸⁶ See Petitioners’ SC Comments at Exhibit FAO-1; see also Harmoni’s SC Comments at 3-4 and Exhibit 2.

Economically-Comparable Countries	Garlic Production (metric tons (MTs))
Mexico	89,840
Romania	55,513

As stated in various prior administrative reviews of the *Order*, we note that China’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 around 15 times greater than the next largest producing country.¹⁸⁷ 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,¹⁸⁸ Commerce has evaluated the garlic production data from Romania and Mexico to determine whether the production was noticeably and measurably 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 an 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 2017 production amounts are so noticeably and measurably large – 55,513 and 89,840 MTs, 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.

Thus, the 2017 FAO data demonstrates that Romania and Mexico are significant producers of identical merchandise in that each country produces a “noticeably or measurably large amount” of fresh garlic.

C. Data Availability

Policy Bulletin 04.1 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.”¹⁸⁹ Section 773(c)(1) of the Act instructs Commerce to value the FOPs based upon the best available information from an ME country or countries that Commerce consider appropriate. When evaluating the best available information, Commerce considers several factors including whether the SV is publicly available, contemporaneous with the POR, represents a broad-market average, tax and duty-exclusive, and

¹⁸⁷ See, e.g., *Garlic 21 Final IDM* at 47, *Garlic 22 Final IDM* at 37-38; see also Harmoni’s SC Comments at Exhibit 2.

¹⁸⁸ *Policy Bulletin 04.1* (acknowledging and emphasizing the need for flexibility and the use of discretion because the “meaning of ‘significant producer’ can differ significantly from case to case”).

¹⁸⁹ *Id.*

specific to the input.¹⁹⁰ There is no hierarchy among these criteria.¹⁹¹ It is Commerce's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis.¹⁹²

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

a. Romania

The petitioners argue that Romania is the source of the best available information to value respondents' factors of production because the fresh garlic grown in Romania is physically comparable to Chinese garlic and the price data is reliable.¹⁹³

The petitioners contend that Romanian garlic bulbs are physically comparable to garlic bulbs exported by respondents in the instant review.¹⁹⁴ The petitioners note that in previous AD determinations of garlic from China, Commerce established that diameter of garlic grown in China "typically ranges between 40-60mm."¹⁹⁵ 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))."¹⁹⁶

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 China by drawing parallels between the moderate, large-sized, and very large-sized varieties available in the two garlic markets.¹⁹⁷ The petitioners cite a completed new shipper review on the garlic AD order where Commerce determined that "the petitioners have provided sufficient evidence to

¹⁹⁰ 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 IDM at Comment 1.

¹⁹¹ 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 IDM at Comment 1.

¹⁹² See *Policy Bulletin 04.1*.

¹⁹³ See Petitioners' SC Comments at 4-11.

¹⁹⁴ *Id.* at 4-9; see also Petitioners' Pre-Prelim Surrogate Comments at 11.

¹⁹⁵ See Petitioners' SC Comments at 9-10 (citing, in part, *Garlic 21 Final IDM* at 46-47; *Garlic 22 Final IDM* at Comment 6; and *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 IDM at Comment 2).

¹⁹⁶ *Id.* at 5-6 and Exhibits ROM-1A and PRC-1.

¹⁹⁷ *Id.* at 8 and Exhibits ROM-2 and PRC-4.

establish that the garlic produced in Romania is comparable to the sizes of garlic bulbs produced in China.”¹⁹⁸

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).¹⁹⁹ The petitioners assert that the garlic bulb data on the record for Romania is contemporaneous, tax-free, monthly, and publicly-available.²⁰⁰ In addition, the petitioners explain that their comparison of the 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.²⁰¹

The petitioners note that Commerce 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.²⁰²

Goodman did not rebut the petitioners’ SC or SV comments.

b. Mexico

Goodman did not submit arguments concerning Mexico’s suitability as a surrogate country. However, Goodman did submit 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.²⁰³

In response, the petitioners provide a declaration from the owner of a Mexican garlic company, along with supporting documentation.²⁰⁴ The declaration, and supporting documentation allegedly show that the Mexican input garlic bulbs are not physically comparable to Chinese garlic bulbs.²⁰⁵ The petitioners also provided evidence of market conditions which may have influenced the price of the Mexican garlic during the POR.²⁰⁶

The petitioners argue that Mexico’s garlic bulb data are not the most reliable on the record of this review. They argue that two of the sources of data placed on the record by Goodman are annual (FAO and SAGARPA), and, thus, there is no way to distinguish between the irrelevant, pre-POR

¹⁹⁸ *Id.* at 9 (citing *Fresh Garlic from the People’s Republic of China: Final Results of the Semiannual Antidumping Duty New Shipper Review of Jinxiang Merry Vegetable Co., Ltd. and Cangshan Qingshui Vegetable Foods Co., Ltd.*; 2012-2013, 79 FR 62103 (October 16, 2014) (*Merry and Cangshan NSR Final*), and accompanying IDM at 6).

¹⁹⁹ See Petitioners’ Pre-Prelim Surrogate Comments at 7-9.

²⁰⁰ *Id.* at 8-9.

²⁰¹ See Petitioners’ SC Comments at 11.

²⁰² See Petitioners’ Pre-Prelim Surrogate Comments at 8-9; see also *Garlic 23 Final* IDM at 23-25.

²⁰³ See Goodman’s SV Submission at Exhibit SV-3 (we note that some translations are incomplete, and one article was not translated at all, “Productividad y calidad de variedades de ajo (*Allium sativum* L.) bajo condiciones desérticas en Caborca, Sonora.”).

²⁰⁴ See Petitioners’ Rebuttal SV Comments at Exhibits MEX-1 and MEX-2.

²⁰⁵ *Id.*

²⁰⁶ *Id.* at Exhibit FP-2 (we note that this article is barely legible).

and post-POR prices.²⁰⁷ The petitioners also point out that the monthly Mexican garlic bulb prices only consist of November 2017, December 2017, and February 2018, thus the majority of pricing information for the POR is missing.²⁰⁸ The petitioners also contend that the data for February 2018 includes garlic prices for producers in only three Mexican states, and, thus, does not constitute a broad market average.²⁰⁹ Finally, the petitioners allege that the monthly source of Mexican garlic bulb prices is not the source used by the Mexican Government to report prices to the FAO, therefore, it cannot be accepted to exclude taxes and duties.²¹⁰

Surrogate Country Selection

The garlic bulb is the single most important SV used to calculate NV in this administrative review. As an initial matter, Commerce has determined that the Romanian monthly and the Mexican annual data sets serve as the source for the FAO. Commerce has relied on FAO data in the past and continues to find that FAO data are (1) specific; (2) based on a broad market average; (3) contemporaneous; (4) exclusive of taxes and duties; and (5) publicly available.²¹¹

However, Commerce has also repeatedly determined that size and quality are the most important characteristics of fresh garlic exported from China to the United States, because the price of the bulb varies with its size and quality.²¹² Information on the record of this review indicates that the diameter of garlic bulbs produced in Romania is physically similar to the diameter of the bulbs grown in China and sold in the United States.²¹³ In a recently concluded new shipper review, Commerce determined that there was “sufficient evidence to establish that the garlic produced in Romania is comparable to the sizes of garlic bulbs produced in China.”²¹⁴ Moreover, our determination in the *Garlic 20 Final*,²¹⁵ that Romanian garlic bulbs are “similar in size to the input garlic bulbs consumed in the production of subject merchandise” was affirmed by the Court of International Trade (CIT).²¹⁶

²⁰⁷ See Petitioners’ Pre-Prelim Surrogate Comments at 9-10.

²⁰⁸ *Id.* at 10.

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ See *Garlic 22 Final*, and accompanying IDM at 41.

²¹² See, e.g., *Fresh Garlic from the People’s Republic of China: Final Results and Final Rescission, in Part, of the 2008-2009 Antidumping Duty Administrative Review*, 76 FR 37321 (June 27, 2011) (*Garlic 15 Final*), and accompanying IDM at 11; *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) (*Garlic 16 Final*), and accompanying IDM at 3, n.10, 15-31; *Fresh Garlic from the People’s Republic of China: Final Results and Partial Rescission of the 13th Antidumping Duty Administrative Review and New Shipper Reviews*, 74 FR 29174 (June 19, 2009) (*Garlic 13 Final*), and accompanying IDM at 6-19; *Fresh Garlic from the People’s Republic of China: Final Results and Partial Rescission of the Eleventh Administrative Review and New Shipper Reviews*, 72 FR 34438 (June 22, 2007) (*Garlic 11 Final*), and accompanying IDM at 9-13. See also *Qingdao Sea-Line Trading Co. v. United States*, 766 F. 3d 1374, 1386 (Fed. Cir. 2014) (holding that garlic bulb size was a more important factor than contemporaneity in a new shipper review with a 2008-2009 period of review).

²¹³ See Petitioners’ SC Comments at 4-9, and Exhibits ROM-1A, ROM-1B, ROM-2, PRC-1, PRC-2, PRC-3, PRC-4, and PRC-5.

²¹⁴ See *Merry and Cangshan NSR Final IDM* at 6.

²¹⁵ See *Fresh Garlic from the People’s Republic of China: Final Results and Final Rescission of the 20th Antidumping Duty Administrative Review*, 81 FR 39897 (June 20, 2016) (*Garlic 20 Final*), and accompanying IDM at 10.

²¹⁶ See *Shenzhen Xinboda Indus. Co., Ltd. v. United States*, 357 F. Supp. 3d 1295, 1309 (CIT 2018).

Commerce preliminarily finds Romania to be the primary surrogate country for this review, because Romania: (1) is at a comparable level of economic development to China; (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, including demonstrating that the size and quality of the Romanian garlic bulbs are similar to that of the input garlic bulbs consumed in the production of subject merchandise. Finally, there is publicly available data from Romania for all FOPs on the record of this review. In particular, there are publicly-available, country-wide garlic bulb prices from Romania for each month of the POR on the record, whereas for Mexico there is only monthly data for three months of the POR. Commerce therefore preliminarily selects Romania as the primary SC for this review. A detailed explanation of the SVs used is provided below in the “Normal Value” section of this notice.

Date of Sale

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

In identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer’s records kept in the ordinary course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.²¹⁷

Information on the record of this review indicates that Goodman set the material terms of sale on the invoice date. Therefore, Goodman reported invoice date as its date of sale.²¹⁸

Comparisons to NV

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c), in order to determine whether Goodman’s sales of the subject merchandise from China to the United States were made at less than NV, Commerce compared the export price (EP) to the NV as described in the “Export Price” and “Normal Value” sections of this memorandum.

1. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (or constructed export prices (CEPs)) (*i.e.*, the average-to-average method) unless Commerce determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, Commerce

²¹⁷ 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 IDM at Comment 10; *Allied Tube and Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-92 (CIT 2001) (upholding Commerce’s rebuttable presumption that invoice date is the appropriate date of sale).

²¹⁸ See Goodman’s August 1, 2019 CQR at C-8.

examines whether to compare weighted-average NVs with the EPs (or constructed EPs 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 Commerce’s examination of this question in the context of administrative reviews, Commerce 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.²¹⁹ In recent investigations, Commerce 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.²²⁰ Commerce 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. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce’s additional experience with addressing the potential masking of dumping that can occur when Commerce 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 EPs (or CEPs) 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 Commerce uses in making comparisons between EP (or CEP) and NV 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

²¹⁹ 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).

²²⁰ 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); and *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

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, Commerce examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, Commerce 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.

2. Results of the Differential Pricing Analysis

For Goodman, based on the results of the differential pricing analysis, Commerce preliminarily finds that 69.3 percent of the value of U.S. sales passes the Cohen's *d* test.²²¹ There is no difference between the weighted-average margin using the average-to-average method compared to the average-to-transaction method. Accordingly, Commerce preliminarily determines to apply the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Goodman.

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.

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

The details of Goodman's sales terms are business proprietary information (BPI).²²² In accordance with section 772(c)(2)(A) of the Act, where appropriate, we made deductions from the sales price for various Chinese expenses such as foreign inland freight, and brokerage and handling. For those expenses that were provided by an market economy (ME) provider and paid for in an ME currency, Commerce used the reported expense. For a detailed description of all adjustments made to Goodman's U.S. price, *see* Goodman's Preliminary Analysis Memo.²²³

Value-Added Tax

In 2012, Commerce 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.²²⁴ Commerce 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, Commerce will reduce the respondent's EP and CEP prices accordingly, by the

²²¹ *See* Memorandum, “Administrative Review of Fresh Garlic from the People's Republic of China: Calculation Memorandum for the Preliminary Results of Goodman,” dated concurrently with this memorandum (Goodman's Preliminary Analysis Memorandum).

²²² *See* Goodman's August 1, 2019 CQR.

²²³ *See* Goodman's Preliminary Analysis Memorandum.

²²⁴ *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).

amount of the tax, duty or charge paid, but not rebated.²²⁵ Where the irrecoverable VAT is a fixed percentage of EP or CEP, Commerce 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.²²⁶

The Chinese VAT schedule placed on the record of this review by Goodman indicates that the standard VAT levy is zero percent, and the rebate rate for subject merchandise is zero percent.²²⁷ For the purposes of these preliminary results, therefore, we did not remove irrecoverable VAT from U.S. price.²²⁸

VII. NORMAL VALUE

Section 773(c)(1) of the Act provides that Commerce shall determine NV using a 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, Commerce 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. Commerce'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.

Commerce 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 Goodman in the production of garlic include but are not limited to: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. Commerce based NV on Goodman's reported FOPs for materials, energy, and labor.

Factor Valuations

In accordance with section 773(c) of the Act, for subject merchandise produced by Goodman, Commerce calculated NVs based on the FOPs reported by Goodman for the POR. Commerce used Romanian import data and other publicly available Romanian data in order to calculate SVs for Goodman's FOPs. To calculate NVs, Commerce multiplied Goodman's reported per-unit FOP quantities by publicly available SVs.²²⁹ Commerce's practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, SVs which are

²²⁵ *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 IDM at Comment 5.A.

²²⁶ *Id.*

²²⁷ See Goodman's August 1, 2019 CQR at Exhibit C-4.

²²⁸ *Id.*

²²⁹ 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).

product-specific, representative of a broad market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties.²³⁰

As appropriate, Commerce adjusted input prices by including freight costs to render them delivered prices. Specifically, Commerce 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.*²³¹ Additionally, where necessary, Commerce adjusted SVs for inflation and exchange rates, and converted all applicable FOPs to a per-kilogram basis.

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

For all other raw material and packing inputs, Commerce used Romanian import prices reported in the GTA.²³² 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.²³³

We valued electricity based on information from Eurostat's reporting of electricity rates,²³⁴ and we valued water using information from the National Regulating Authority for the Public Utility Services of Romania Statistics.²³⁵

We valued brokerage and handling using information in the World Bank's *Doing Business 2015 Romania* report, and truck freight using information in the World Bank's *Doing Business 2016 Romania* report. These reports covered inland transportation and handling relating to importing and exporting a standardized cargo of goods.²³⁶

In *Labor Methodologies*, Commerce determined that the best methodology to value labor is to use industry-specific labor rates from the primary surrogate country.²³⁷ Commerce does not, however, preclude all other sources from evaluation for use in labor costs.²³⁸ Rather, we

²³⁰ 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 IDM at Comment 2.

²³¹ See *Sigma Corp. v. United States*, 117 F. 3d 1401, 1408 (CAFC 1997) (*Sigma Corp.*).

²³² <http://www.gtis.com/GTA.htm>.

²³³ See Petitioners' SV Submission at Exhibits 2A and 2B.

²³⁴ *Id.* at Exhibit 4A.

²³⁵ *Id.* at Exhibit 4B.

²³⁶ *Id.* at Exhibit 6; see also Petitioners' Final SV Submission at Exhibit 7.

²³⁷ See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (*Labor Methodologies*).

²³⁸ 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), accompanying PDM at 11, unchanged in *Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2012-2013*, 80 FR 13332 (March 13, 2015).

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 NISR, Romanian statistics institute, for the manufacture of food products in Romania. The NISR data is from 2017 and 2018, and thus is contemporaneous with the instant POR.

To value factory overhead, selling, general and administrative expenses (SG&A), and profit, we used information from the 2017 financial statement of SC Boromir, a Romanian food processor, and the 2018 financial statement of Amylon, another Romanian food producer.²³⁹ 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.

VIII. CURRENCY CONVERSION

Where necessary, Commerce 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.

IX. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

Agree

Disagree

1/8/2020

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

²³⁹ See Petitioners' Final SV Submission at Exhibit 7.