



A-570-831
Administrative Review
11/01/2017-10/31/2018
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MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

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

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

I. SUMMARY

The Department of Commerce (Commerce) analyzed the case briefs and rebuttal briefs submitted by interested parties in the 24th administrative review of the antidumping duty order on fresh garlic from the People's Republic of China (China). As a result of this analysis, we have made no changes to the *Preliminary Results*.¹ We recommend that you approve the positions described in the "Decisions of the Issues" section of this memorandum.

Comment 1: Whether the CFTG Has Standing to Request a Review
Comment 2: Whether 26 U.S.C. 6103 Is Applicable
Comment 3: Whether Sections 782(d) and 782(e) of the Act are Applicable
Comment 4: Whether Section 751 of the Act Requires Country-Wide Reviews
Comment 5: Whether Commerce May Rescind a Review for a Company that
Has Not Demonstrated the Absence of *De Jure* and *De Facto*
Government Control
Comment 6: Whether Commerce Exceeded its Authority to Combine Reviews
Comment 7: Whether the Petitioners and Harmoni's Relationship Reveals
Fraudulent Activity
Comment 8: Whether Commerce Should Pursue an 18 U.S.C. 1001 Case
Against Ms. Medina
Comment 9: Whether Harmoni and the FGPA Conspired to Defraud the United
States

¹ 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*, 85 FR 2400 (January 15, 2020) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).



- Comment 10: Whether Roots Farm Has Standing to Request an Administrative Review
- Comment 11: Whether Commerce Should Calculate a Margin for Harmoni

II. BACKGROUND

On January 15, 2020, Commerce published the *Preliminary Results* of this administrative review, which covers the period of review (POR), November 1, 2017 through October 31, 2018. We preliminarily found that the mandatory respondent, Shijiazhuang Goodman Trading Co., Ltd. (Goodman) sold subject merchandise to the United States at less than normal value. Additionally, we preliminarily found that three companies qualified for separate rate status. We also found that the review requests made by the Coalition for Fair Trade in Garlic, and its individual members (the CFTG), and Roots Farm Inc. (Roots Farm) were not valid, and accordingly, we preliminarily rescinded the review with respect to Zhengzhou Harmoni Spice Co., Ltd. (Harmoni) and eighteen other companies.² In the *Preliminary Results*, we stated that interested parties would have an opportunity to comment.³

On February 14, 2020, the petitioners⁴ withdrew their request for verification.⁵ On March 26, 2020, Commerce set the deadlines for case briefs and rebuttal briefs.⁶ Commerce extended the deadlines for case briefs and rebuttal briefs on April 1, 2020.⁷ The CFTG and Roots Farm each timely submitted case briefs.⁸ On April 15, 2020, and April 20, 2020, Commerce extended the deadlines for rebuttal briefs.⁹ Harmoni and the petitioners each timely filed rebuttal briefs.¹⁰

On January 22, 2020, the CFTG requested a hearing.¹¹ The petitioners requested to participate in

² *Id.*

³ *Id.*

⁴ The petitioners are the Fresh Garlic Producers Association and its individual members: Christopher Ranch L.L.C.; the Garlic Company; and Valley Garlic.

⁵ See Petitioners' Letter, "24th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – Petitioners' Withdrawal of Request for Verification," dated February 14, 2020.

⁶ See Memorandum, "24th Administrative Review of Fresh Garlic from the People's Republic of China: Briefing Schedule," dated March 26, 2020.

⁷ See Memorandum, "24th Administrative Review of Fresh Garlic from the People's Republic of China: Extension of Briefing Schedule," dated April 1, 2020.

⁸ See CFTG's Letter, "Case Brief," dated April 10, 2020 (CFTG's Case Brief); see also Roots Farm's Letter, "Fresh Garlic from the People's Republic of China Antidumping Administrative Review: Case Brief of Roots Farm," dated April 13, 2020 (Roots Farm's Case Brief).

⁹ See Memoranda, "24th Administrative Review of Fresh Garlic from the People's Republic of China: Extension of Rebuttal Briefing Schedule," dated April 15, 2020; and "24th Administrative Review of Fresh Garlic from the People's Republic of China: Second Extension of Rebuttal Briefing Schedule," dated April 20, 2020.

¹⁰ See Harmoni's Letter, "Harmoni Administrative Reply Briefs: 24th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China (A-570-831)," dated April 24, 2020 at Attachment 1 (Harmoni's Rebuttal Brief re CFTG) and Attachment 2 (Harmoni's Rebuttal Brief re Roots Farm); see also Petitioners' Letter, "Fresh Garlic from the People's Republic of China: Petitioners' Case Rebuttal Brief," dated April 24, 2020 (Petitioners' Rebuttal Brief).

¹¹ See CFTG's Letter, "24th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – CFTG Request for Hearing," dated January 22, 2020.

any public hearing held with respect to this administrative review.¹² In lieu of a public hearing, Commerce met with counsel for the CFTG via video conference on May 26, 2020.¹³ Between January 17, 2020, and June 1, 2020, the petitioners, the CFTG, Harmoni, and Roots Farm each submitted requests to submit new factual information (NFI), comments on requests to submit NFI, requests to reconsider rejections of untimely NFI, and/or various submissions containing untimely or unsolicited NFI.¹⁴ Between March 3, 2020, and October 7, 2020, Commerce rejected certain NFI.¹⁵

¹² See Petitioners' Letter, "24th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – Petitioners' Request to Participate in Any Public Hearing Scheduled by the Department," dated February 14, 2020.

¹³ See Memorandum, "24th Administrative Review of Fresh Garlic from the People's Republic of China: Ex-Parte Meeting with the CFTG," dated May 26, 2020.

¹⁴ See CFTG's Letters, "24th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – CFTG Request to Submit New Factual Information (NFI)," dated January 17, 2020; "24th Administrative Review of Fresh Garlic from the People's Republic of China - Request for the Department to reconsider its March 3, 2020 letter and to extend the time for the CFTG to respond based on the Department's reconsideration of CFTG's December 6, 2019 letter – filed on behalf of the CFTG," dated March 5, 2020; "Resubmission of an amended copy of the '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 March 5, 2020; "24th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – CFTG Request that Department Supplement AR 24 Record with a copy of CFTG v US, Slip Op. 20-48, Court No. 18-00137 (April 14, 2020)," dated April 23, 2020; "24th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – CFTG Request that Department reconsider and revise the AR 24 record by accepting previously rejected CFTG submissions," dated April 29, 2020; *see also* Harmoni's Letters, "Harmoni Reply to CFTG Request to Place New Factual Information on the Record in the 24th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China," dated January 21, 2020; "Harmoni Request to Reject CFTG New Factual Information in the 24th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China," dated February 4, 2020; "Harmoni Request to Reject CFTG New Factual Information in the 24th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China," dated March 2, 2020; and "Harmoni Request to Reject CFTG New Factual Information in the 24th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China," dated March 13, 2020. We note that this footnote does not contain all of the rejected submissions, as some were removed from the record.

¹⁵ See Commerce's Letters, "24th Antidumping Duty Administrative Review of Fresh Garlic from the People's Republic of China: Untimely and Unsolicited New Factual Information Filed by the CFTG on December 6, 2019," dated March 3, 2020; "24th Antidumping Duty Administrative Review of Fresh Garlic from the People's Republic of China: Untimely and Unsolicited New Factual Information Filed by the CFTG on December 10, 2019," dated March 3, 2020; "24th Antidumping Duty Administrative Review of Fresh Garlic from the People's Republic of China: Untimely New Factual Information Filed by the CFTG on January 30, 2020," dated March 10, 2020 (Commerce's March 10, 2020 Rejection Letter); "24th Antidumping Duty Administrative Review of Fresh Garlic from the People's Republic of China: Untimely and Unsolicited New Factual Information Filed by the CFTG on February 27, 2020," dated March 23, 2020 (Commerce's March 23, 2020 Rejection Letter); "24th Antidumping Duty Administrative Review of Fresh Garlic from the People's Republic of China: Untimely and Unsolicited New Factual Information Filed by the CFTG on March 12, 2020," dated March 26, 2020; "24th Administrative Review of the Antidumping Duty Order on Garlic from the People's Republic of China: Declining to Place Court Decision on the Record," dated May 1, 2020; "24th Administrative Review of the Antidumping Duty Order on Garlic from the People's Republic of China: Declining to Reconsider Rejected Submissions," dated May 12, 2020; "24th Antidumping Duty Administrative Review of Fresh Garlic from the People's Republic of China: Rejection and Removal of Untimely New Factual Information and Written Argument Filed by the CFTG," dated August 31, 2020; "24th Antidumping Duty Administrative Review of Fresh Garlic from the People's Republic of China: Rejection of Submission Filed by Harmoni," dated August 31, 2020; "24th Antidumping Duty Administrative Review of Fresh Garlic from the People's Republic of China: Rejection of Submission Filed by FGPA," dated August 31, 2020;

On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.¹⁶ On June 30, 2020, Commerce extended the deadline for these final results.¹⁷ On July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days.¹⁸ The deadline for the final results of this review is now November 2, 2020.

We are conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

III. SCOPE OF THE ORDER

The products covered by the order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay.

The scope of this order does not include the following: (a) garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings: 0703.20.0005, 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, the 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 (CBP) to that effect.

“24th Antidumping Duty Administrative Review of Fresh Garlic from the People’s Republic of China: Rejection and Removal of Untimely New Factual Information Filed by Roots Farm,” dated October 7, 2020; and “24th Antidumping Duty Administrative Review of Fresh Garlic from the People’s Republic of China: Rejection of Unsolicited Factual Information Filed by Harmoni” dated October 7, 2020.

¹⁶ See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19,” dated April 24, 2020.

¹⁷ See Memorandum, “Fresh Garlic from the People’s Republic of China – 24th Administrative Review: Extension of Deadline for the Final Results of the Review,” dated June 30, 2020.

¹⁸ See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,” dated July 21, 2020.

IV. FINAL RESCISSION OF ADMINISTRATIVE REVIEW

As discussed below, Commerce continues to find 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 continues to find that the CFTG and Roots Farm's review requests were invalid *ab initio* and is rescinding the review with respect to nineteen companies.¹⁹ 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, 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.

V. DISCUSSION OF THE ISSUES

Comment 1: Whether the CFTG Has Standing to Request a Review.

CFTG's Case Brief

- Commerce tied allegations raised against Mr. Crawford and Ms. Sanford in prior reviews to the current review. Commerce suggests that there is a continuing pattern of behavior. However, evidence on this record establishes that no Chinese entity provided Mr. Hume any money for compensation to Mr. Crawford, Ms. Sanford, Ms. Bateman, or Mr. Bateman.²⁰
- Commerce continues to accept Harmoni's claims that Mr. Hume and Mr. Crawford are linked to Chinese entities even though Harmoni dismissed Mr. Crawford and Mr. Hume from the RICO case.²¹
- In AR 21, Harmoni had relationships with Ms. Medina and Mr. Katz. Harmoni used those relationships to discredit Mr. Crawford and Hume. The statements made by Ms. Medina and Mr. Katz have been rebutted on this record.²²

¹⁹ The nineteen companies for which Roots Farm and the CFTG made the only non-withdrawn review requests are: (1) Hebei Golden Bird Trading Co., Ltd.; (2) Jining Yongjia Trade Co., Ltd.; (3) Jinxiang Changwei Agricultural Products Co., Ltd.; (4) Jinxiang Dingyu Agricultural Products Co., Ltd.; (5) Jinxiang Fitow Trading Co., Ltd.; (6) Jinxiang Guihua Food Co., Ltd.; (7) Jinxiang Hejia Co., Ltd.; (8) Jinxiang Honghua Foodstuff Co., Ltd.; (9) Jinxiang Infang Fruit & Vegetable Co., Ltd.; (10) Jinxiang Kingkey Trade 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.

²⁰ See CFTG's Case Brief at 42-43; see also 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 at 6.

²¹ See CFTG's Case Brief at 43 (citing *Preliminary Results*, PDM at 12).

²² *Id.* at 44 (citing 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," dated April 16, 2019 (CFTG's April 16, 2019 Letter) at 8-9 and Exhibit 6).

- The record of this review shows that Ms. Medina: (1) “was indicted for forging {Hume & Associates (H&A)} checks;”²³ (2) contacted Harmoni after being fired by H&A for using the H&A business credit card for personal expenses without approval;”²⁴ (3) “downloaded H&A files, including BPI files and personal Hume emails, for no H&A business purpose;”²⁵ and (4) “filed a case financed by Harmoni with the Disciplinary Board of the Supreme Court of New Mexico falsely alleging Hume was practicing law in New Mexico without a license. The outcome confirmed that Ms. Medina was not credible.”²⁶
- Mr. Katz “became a witness for Harmoni in what can only be reconciled with his desperate need for money.”²⁷
- After the preliminary results of the 21st administrative review, “Mr. Katz claimed he was not fully informed about Hume’s having Chinese clients in AR 21, and that some certifications were filed with his name about which he had not been informed. . . Commerce asked no questions about the matter that occurred 4 years ago and the CFTG presumes Commerce agrees Mr. Katz’s claims were without merit.”²⁸
- Mr. Katz claimed Mr. Crawford was not a farmer but knew that this was materially false as it related to the standing of Mr. Crawford as a producer and wholesaler of garlic.²⁹
- Mr. Katz also claimed that Mr. Provost, “a neutral third party,” told him that Hume received money to destroy Harmoni. However, Mr. Provost has a long-term relationship with the FGPA, and was “urged. . . to make contact with Mr. Katz,” by Harmoni.³⁰
- Harmoni improperly influenced Mr. Katz by advising him that: “{1} Hume had received \$100,000 to file a review request; {2} Harmoni would participate in a review if someone other than a Hume client requested the review though others requested that Harmoni be reviewed; {and 3} Harmoni supported Katz’s false claim that {Mr. Katz} was not advised of materials {the New Mexico Garlic Growers Coalition (NMGGC)} received and reviewed and approved submissions to Commerce.”³¹
- “Evidence confirms Harmoni agreed to compensate both {Ms. Medina and Mr. Katz} before the end of the 21 AR. The Indemnification Agreement for Ms. Medina states that

²³ *Id.* (citing 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 Request that the Department Pursue a 18 U.S.C. Section 1001 case against Cynthia Medina,” dated May 14, 2019 at Exhibit 1).

²⁴ *Id.* (citing 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 (Harmoni’s February 14, 2019 Letter) at Document VII at 15).

²⁵ *Id.* (citing 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. section 1001 Action Against Cynthia Medina Ferebee,” dated May 22, 2019 (CFTG’s May 22, 2019 Letter) at Exhibit 1).

²⁶ *Id.* at 45 (citing CFTG’s April 16, 2019 Letter at 20; and CFTG’s May 22, 2019 Letter at 7).

²⁷ *Id.* at 47.

²⁸ *Id.* at 47-48 (citing CFTG’s April 16, 2019 Letter at Exhibit 5).

²⁹ *Id.* at 48 (citing CFTG’s Letter, “24th Administrative Review of Fresh Garlic from the People’s Republic of China – Response to the Department’s November 20, 2019 Letter – filed on behalf of the CFTG,” dated November 25, 2019 (CFTG’s November 25, 2019 Letter) at 5, n.9).

³⁰ *Id.* at 48-49 (citing Harmoni’s February 14, 2019 Letter at Exhibit 38, Document 33 at 10; and CFTG’s April 16, 2019 Letter at Exhibit 12, nn.4 and 5).

³¹ *Id.* at 49-50 (citing Harmoni’s February 14, 2019 Letter at 63; and CFTG’s April 16, 2019 Letter at Appendix 21, page 2 and Exhibit 5).

Harmoni will ‘defend, indemnify, and hold’ Ms. Medina harmless ‘from and against any and all losses.’ Harmoni paid Mr. Katz for a meeting in New York, and, more importantly, to review records.”³²

- The payment to Mr. Crawford was not related to AR 21 or AR 22. “The record is now clear that neither Hume nor H&A treated the payment to Crawford as a business expense.”³³
- “Mr. Crawford paid his airfare and two of seven nights {sic} he was in China. . . If he were being ‘compensated’ for filing a review request, the Chinese entities would have covered all of his expenses.”³⁴
- Regarding the \$50,000 payment to Mr. Crawford, “{t}here is no evidence that any portion of the \$50,000 came from a Chinese source. . .Hume showed a substantial portion of the money came from the sale of an automobile.”³⁵
- “The difference in the amount Mr. Crawford reported for seed he purchased from Ms. Sanford and the figure he reported in his income statement is easily explained. . . one obvious explanation is that Mr. Crawford did not pay for the seed from his account, but rather from a separate account. . . such as High Mountain Garlic LLC.”³⁶
- Mr. Crawford submitted information to confirm the accuracy of his standing questionnaire response, but Commerce abused its discretion in rejecting this information as unsolicited factual information.³⁷
- Additionally, the following evidence supports the standing of Mr. Crawford:
 - “Mr. Crawford paid for membership at the farmer’s market.”³⁸
 - The Compliance & Integrity Manager of the farmers market “provided a letter attesting to Mr. Crawford’s current and longstanding membership.”³⁹
 - “El Bosque Garlic Farm is included in the ‘Garlic Growers List’ as a grower of garlic.”⁴⁰

³² *Id.* at 51 (citing CFTG’s April 16, 2019 Letter at Exhibits 4 and 8; and Harmoni’s February 21, 2017 Letter at Exhibit 10). We note that the next few pages of CFTG’s Case Brief contain arguments concerning our findings in ARs 21 and 22. As we only included these findings in the PDM for context, we will not be addressing those arguments for these final results.

³³ *Id.* at 56.

³⁴ *Id.*

³⁵ *Id.* at 57 (citing 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 (CFTG’s July 18, 2019 Letter) at 5 and Exhibit 6).

³⁶ *Id.* at 57-58 (citing 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 the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China,” dated December 4, 2019 (Harmoni’s December 4, 2019 Letter) at 2).

³⁷ *Id.* at 58.

³⁸ *Id.* (citing CFTG’s September 17, 2019 Standing Questionnaire Response at Exhibit 6; and CFTG’s September 23, 2019 Corrected Questionnaire Response at Exhibit 5).

³⁹ *Id.* (citing CFTG’s September 17, 2019 Standing Questionnaire Response at Exhibit 9).

⁴⁰ *Id.* (citing Harmoni’s February 14, 2019 Letter at Document 6).

Ms. Sanford

- “Ms. Sanford did not provide a copy of her 2015 tax return along with her AR 22 QR. Because of the fire, Ms. Sanford did not include a Schedule F with her return. The absence of a Schedule F does not confirm the absence of farmer status.”⁴¹
- Ms. Sanford did provide a copy of her 2016 tax return, which confirms her explanation as to why Harmoni’s private investigators were unable to confirm that she was a vendor at the farmers market.⁴²
- “Mr. Crawford never ‘promised’ to loan money to Ms. Sanford and she had no contact with any Chinese entity.”⁴³
- Ms. Sanford informed Commerce that she was unable to locate a copy of her 2017 tax return. “Whether or not Ms. Sanford submitted a copy of her 2017 return, Ms. Sanford did submit her 2016 return with the accompanying Schedule F and her 2018 tax return.”⁴⁴
- In response to Commerce’s claim that Ms. Sanford did not submit sales or production records for the POR, “Ms. Sanford did provide planting, harvesting, and sales ‘estimates since I do not keep receipts (that are not required) and the transactions are in cash.’ She also noted that she had not made a ‘farm profit in the last 5 years.’”⁴⁵
- “For a small farm with sheep and garlic, {the} records {provided by Ms. Sanford} were sufficient. Ms. Sanford’s principal source of farm income came from raising sheep.”⁴⁶
- The CFTG filed a copy of Ms. Sanford’s 2018 tax return “that covers the majority of the 24 POR. The tax return stated her occupation was ‘FARMING.’”⁴⁷

Mr. Bateman

- “Mr. Bateman was the manager of Morning Star Farm while his mother was out of the country. . . For the 2018 and prior tax returns, the only employee was Ms. Bateman.”⁴⁸
- When the CFTG filed its standing questionnaire response, Morning Star Farm’s 2018 tax return had not been filed. When CFTG attempted to file it at a later date, Commerce rejected the filing as untimely.⁴⁹
- During 2019, Ms. Bateman was out of the country. “In her absence, {Mr. Bateman} assumed responsibilities for the farm. He was not an ‘employee’ for tax purposes in 2018. He was the manager of Morning Star Farm for reporting the {questionnaire response}.”⁵⁰

⁴¹ *Id.* at 62.

⁴² *Id.* (citing CFTG’s April 16, 2019 Letter at Exhibit 1; and CFTG’s September 17, 2019 Standing Questionnaire Response at question 14 and Exhibit 22).

⁴³ *Id.*

⁴⁴ *Id.* at 62-63.

⁴⁵ *Id.* at 63 (citing *Preliminary Results*, PDM at 15; and CFTG’s September 17, 2019 Standing Questionnaire Response at Sanford’s Response to Questions 3 and 9).

⁴⁶ *Id.* (citing CFTG’s September 17, 2019 Standing Questionnaire Response at Sanford’s Response to Questions 1 and 3).

⁴⁷ *Id.*

⁴⁸ *Id.* at 64.

⁴⁹ *Id.*

⁵⁰ *Id.* at 65.

- The Morning Star Farm brochure shows that Mr. Bateman was the manager, and that Ms. Bateman was out of the country.⁵¹
- In response to the discrepancies in Morning Star Farm’s tax returns that Commerce noted, “the file date was the date the extension request had to be filed. Again, Commerce is disclosing tax information in violation of 26 U.S.C. 6103.”⁵²
- In response to Commerce’s assertion that Mr. Bateman did not provide sales or production records of any kind, “a review of the Bateman {questionnaire response} shows the amount of garlic Morning Star Farm sold and planted during the AR 24 POR {}.”⁵³
- The purpose of attaching certifications when factual information is submitted is to ensure that the person doing the certifying is ‘responsible’ for presenting the factual information. “Certainly{, } a manager is a responsible person and a manager (or legal representative) may not be an employee. . . Mr. Bateman’s certifications met the ‘accurate and complete’ condition and the record supports the fact that Mr. Bateman was the manager of Morning Star Farm.”⁵⁴
- Additionally, the FGPA did not file a company certification with its review request in this segment. When the FGPA did file a company certification in this segment, “{t}wo of Mr. Layous’ certifications misidentified the membership of the FGPA as including Vessey and Company. . . Commerce should have questioned the FGPA or considered the certification invalid.”⁵⁵
- Finally, Harmoni’s responses to the section A questionnaire, sections C and D questionnaire, and the supplemental questionnaire “were accompanied by certifications signed by the ‘legal representatives’ of the numerous Harmoni affiliates omitted the word ‘employee.’ Commerce never questioned the authenticity of these certifications.”⁵⁶

Petitioners’ Rebuttal Brief

- The Federal Circuit, in *NMGGC II*, has confirmed that where Commerce “has determined a review request is illegitimate *ab initio*, the requesting entity’s standing to participate in the review ‘has been rendered null and void.’”⁵⁷
- As a result, if Commerce continues to find that the CFTG and Roots Farm lack standing, “it should not consider the remainder of these parties’ arguments in its final decision memorandum.”⁵⁸

⁵¹ *Id.* (citing CFTG’s September 17, 2019 Standing Questionnaire Response at Exhibit 17).

⁵² *Id.* at 66-67.

⁵³ *Id.* at 67 (citing *Preliminary Results*, PDM at 15).

⁵⁴ *Id.* (citing 19 CFR 351.303(g)(1); and section 782(b) of the Act).

⁵⁵ *Id.* at 68 (citing Petitioners’ Letters, “24th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China – Petitioners’ Request for Administrative Review,” dated November 30, 2018 (Petitioners’ November 30, 2018 Review Request); “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; and “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).

⁵⁶ *Id.* (citing Harmoni’s July 11, 2019 Section A Questionnaire Response (Harmoni’s July 11, 2019 AQR); Harmoni’s August 1, 2019 Sections C and D Questionnaire Response (Harmoni’s August 1, 2019 CDQR); and Harmoni’s December 23, 2019 Supplemental Questionnaire Response (Harmoni’s December 23, 2019 SQR)).

⁵⁷ See Petitioners’ Rebuttal Brief at 5-6 (citing *N.M. Garlic Growers Coalition v. United States*, 953 F.3d 1358, 1373 (Fed. Cir. 2020) (*NMGGC II*)).

⁵⁸ *Id.* at 6.

Mr. Crawford

- CFTG has failed to identify any legal or factual basis for why Commerce should restore Mr. Crawford’s credibility. “Past misconduct in front of the same agency, regarding the same issue, is therefore highly relevant to {the} CFTG’s members’ credibility in this segment.”⁵⁹
- Commerce’s findings in AR 21 and AR 22 are not based on testimony from either Ms. Medina or Mr. Katz, so the CFTG’s arguments concerning the credibility of the two are irrelevant.⁶⁰
- In AR 22, Mr. Hume and Mr. Crawford both “claimed that Mr. Hume paid Mr. Crawford \$50,000 in March 2015 for Mr. Crawford’s participation in AR 20, but that this money came from Mr. Hume’s personal account.”⁶¹
- In this same segment, Mr. Crawford stated that he had not “received {any} remuneration or equipment gratis during 2015 and 2016.”⁶²
- Additionally, Commerce has determined that “the record {of AR 22} indicates that the payment was made from {H&A’s} bank account, and was booked as an expense to the firm.”⁶³
- In this segment, Mr. Hume stated that the payment was a gift “because Mr. Crawford was. . . having financial difficulties including the care for his wife afflicted with Alzheimer’s.”⁶⁴
- The claim that the \$50,000 payment was a gift, which Commerce determined was contradicted by record evidence in AR 22, continues to be contradicted by the record in this segment.⁶⁵
- Also in this segment, Mr. Hume admitted that the \$50,000 payment came not from his personal account, but from funds received by H&A for services performed on behalf of Mr. Hume’s Chinese clients.⁶⁶
- Now, in its case brief, the CFTG argues that “{t}here is no evidence that any portion of the \$50,000 came from a Chinese source, ‘ and ‘Hume showed a substantial portion of the money came from the sale of an automobile.”⁶⁷

⁵⁹ *Id.* at 9.

⁶⁰ *Id.* at 9-10.

⁶¹ *Id.* at 12 (citing *Fresh Garlic from the People’s Republic of China: Final Results and Partial Rescission of the 22nd Antidumping Duty Administrative Review and Final Results and Rescission, in Part, of the New Shipper Reviews; 2015-2016*, 83 FR 27949 (June 15, 2018) (*Garlic 22 Final*), and accompanying IDM at 24).

⁶² *Id.* at 12-13 (citing *Garlic 22 Final*, IDM at 24).

⁶³ *Id.* at 13 (citing *Garlic 22 Final*, IDM at 24).

⁶⁴ *Id.* at 13 (citing CFTG’s April 16, 2019 Letter at 13).

⁶⁵ *Id.* at 14.

⁶⁶ *Id.* at 14-15 (citing CFTG’s Letter, “24th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China – Request for Time to Respond to the April 30, 2019 Submission filed on behalf of Zhengzhou Harmoni Spice Co., Ltd. and its US Affiliate Harmoni International Spice, Inc.,” dated May 6, 2019 (CFTG’s May 6, 2019 Letter) at 2) (“{A}ny payment Crawford or Katz received from me was from funds I had received for services to clients (Chinese and others)...”).

⁶⁷ *Id.* at 15 (citing CFTG’s Case Brief at 63).

- There is no way for Commerce to determine which version of the statements made by Mr. Crawford, Mr. Hume, and the CFTG on this record to believe. “Thus, {Commerce’s} preliminary {decision}. . . is supported by the record.”⁶⁸
- Concerning the contradictions in Mr. Crawford’s purchases of seed garlic, the CFTG does not point to any record evidence to support its claim that Mr. Crawford did not pay for the seeds from his account.⁶⁹
- “If Mr. Crawford purchased seed through a separate entity, that entity is not a member of the CFTG,” therefore, its seed purchases would not be relevant to the CFTG’s standing.⁷⁰
- It was Mr. Crawford’s “burden to build an adequate record, not {Commerce’s}.”⁷¹ Additionally, the CFTG admitted that Mr. Crawford’s seed garlic claim was irreconcilable.⁷²
- Commerce should clarify that its credibility determination concerning Mr. Crawford does not depend on the issues relating to his production and sales records, but rather his many contradictions on this record, along with the records of ARs 21-22.⁷³
- Mr. Crawford’s assertion that “{n}o member of {his} family has had any business dealings with companies involved in the production and/or sale of Chinese garlic during PORs 19-24”, is false.⁷⁴
- Mr. Crawford entered garlic processing equipment and fresh garlic into the United States during the POR through High Mountain Garlic LLC, a company attributed to Mr. Crawford by the CFTG’s own case brief.⁷⁵
- Record evidence shows that, contrary to the CFTG’s claim, Mr. Crawford does not depend on his production of garlic for “‘a significant part, ‘ of his income.”⁷⁶

Ms. Sanford

- Ms. Sanford’s claim that she was not promised any loans is contradicted by record evidence. Mr. Crawford explicitly stated “that he loaned ‘Sanford. . .’ to assist in increasing her garlic production ‘in March 2018.’”⁷⁷
- Instead of addressing Commerce’s findings, the CFTG claims that Ms. Sanford’s statement was not contradicted because she was not promised any loans, as Mr. Crawford

⁶⁸ *Id.* (citing *Preliminary Results*, PDM at 13).

⁶⁹ *Id.* at 16.

⁷⁰ *Id.*

⁷¹ *Id.* (citing *Qingdao Sea-Line Trading Co. v. United States*, 766 F.3d 1378, 1386 (Fed. Cir. 2014) (*Qingdao Sea-Line*); and *QVD Food Co. v. United States*, 658 F.3d 1318, 1324 (Fed. Cir. 2011) (*QVD Food*) (“{T}he burden of creating an adequate record lies with interested parties and not Commerce.”)).

⁷² *Id.* at 16-17 (citing CFTG’s Case Brief at 60).

⁷³ *Id.* at 17.

⁷⁴ *Id.* at 23 (citing CFTG’s September 17, 2019 Standing Questionnaire Response at Exhibit 3, page 6).

⁷⁵ *Id.* (citing 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 the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China,” dated October 11, 2019 (Harmoni’s October 11, 2019 Letter) at Exhibit 4; and CFTG’s Case Brief at 58).

⁷⁶ *Id.* at 24 (citing CFTG’s September 17, 2019 Standing Questionnaire Response at 5 and Exhibits 3 to 6).

⁷⁷ *Id.* at 17 (citing CFTG’s September 17, 2019 Standing Questionnaire Response at Exhibit 19, page 4, and Exhibit 3, page 5).

loaned her money. However, Commerce’s questionnaire asked the CFTG members if to “identify any and all loans provided to or promised to you.”⁷⁸

- “Ms. Sanford’s failure to keep any records demonstrates that she is not a garlic farmer, does not have standing, and any claim to the contrary is simply not credible.”⁷⁹
- Both the CFTG and Ms. Sanford’s explanations for her failure to submit her 2016 tax return are contradicted by record evidence.⁸⁰
- Record evidence shows that, contrary to the CFTG’s claim, Ms. Sanford did not depend on her production of garlic “‘for a significant part’ of her income.”⁸¹

Mr. Bateman

- Mr. Bateman does not meet any of the requirements of a domestic interested party as described in sections 771(9)(C)-(G) of the Act. Mr. Bateman “is not a manufacturer, producer or wholesaler of fresh garlic, he is not a union, he is not a trade or business association, and this investigation does not involve a processed agricultural product as defined by the statute.”⁸²
- Since Mr. Bateman does not own Morningstar Farm, Commerce “should determine that Mr. Bateman is not a domestic interested party and does not support either his own or the CFTG’s standing to request a review in this segment.”⁸³
- Additionally, the CFTG states in its case brief that Mr. Bateman was not even employed by Morningstar Farm in 2018.⁸⁴
- The CFTG claimed that Mr. Bateman was not an employee of Morningstar Farm until 2019 but fails to cite any record evidence to support its claim. More importantly, if Mr. Bateman was not an employee of Morningstar Farm in 2018, how did he request an administrative review on behalf of Morningstar Farm in November of 2018?⁸⁵
- Commerce correctly found that Mr. Bateman failed to timely submit Morningstar Farm’s 2018 tax return, along with its garlic production and sales documentation. “Mr. Bateman’s failure to keep any records further demonstrates his lack of standing, and {the} CFTG’s contrary claim is simply not credible.”⁸⁶
- Record evidence shows that, contrary to the CFTG’s claim, Ms. Bateman did not depend on her production of garlic “‘for a significant part’ of her income.”⁸⁷
- Neither Mr. Bateman nor Ms. Sanford submitted any supporting documentation. “Ms. Sanford’s admission that she does not keep any records concerning her planting,

⁷⁸ *Id.* at 18 (citing CFTG’s Case Brief at 62; and CFTG’s September 17, 2019 Standing Questionnaire Response at Exhibit 19, page 4).

⁷⁹ *Id.*

⁸⁰ *Id.* at 22-23 (citing CFTG’s April 16, 2019 Letter at 2-3).

⁸¹ *Id.* at 24-25 (citing CFTG’s September 17, 2019 Standing Questionnaire Response at 5 and Exhibit 19).

⁸² *Id.* at 19-20.

⁸³ *Id.* at 20.

⁸⁴ *Id.* (citing CFTG’s Case Brief at 65).

⁸⁵ *Id.* at 21 (citing CFTG’s Case Brief at 64-65).

⁸⁶ *Id.* (citing *Preliminary Results*, PDM at 15; and CFTG’s Case Brief at 66).

⁸⁷ *Id.* at 24-25 (citing CFTG’s September 17, 2019 Standing Questionnaire Response at 5 and Exhibits 13-15). The petitioners note that “[a]lthough Mr. Bateman, the son of Ms. Bateman, is the individual member of the CFTG, Mr. Bateman submitted information concerning his mother, not his own information.” *see* Petitioners’ Rebuttal Brief at n.83.

harvesting, and sales of garlic is a strong indication she is not a domestic interested party.”⁸⁸

Harmoni’s Rebuttal Brief

Mr. Crawford

- The record for AR 21 is closed, and Commerce’s determination that Mr. Crawford’s submissions were not credible was affirmed by the Court of International Trade (CIT) and the Federal Circuit.⁸⁹
- There is no dispute that Mr. Crawford failed to disclose the \$50,000 payment to Commerce in AR 21. Mr. Hume and Mr. Crawford “knew that the existence of a close business relationship between Mr. Crawford and the QTF Entity. . . could result in {Commerce} agreeing with Harmoni’s contention that the NMGGC members were acting as strawmen for the QTF Entity.”⁹⁰
- Mr. Hume has constantly changed his explanation for why he paid Mr. Crawford. His discussion of the payment in CFTG’s case brief⁹¹ directly contradicts the explanation he gave to the CIT in the AR 21 litigation.⁹²
- Mr. Hume’s claim that the payment had nothing to do with the compensation he was receiving from China is directly contradicted by the fact that “H&A booked the payment as compensation to Mr. Crawford.”⁹³
- The CFTG pointed to Mr. Hume’s 2015 tax return to support its argument “‘that neither Hume nor H&A treated the payment to Crawford as a business expense.’ . . . {However, } {t}he CFTG does not provide a citation to this reference.” It cannot, since Commerce rejected the submission on March 10, 2020.⁹⁴
- The fact that the CFTG attempted to “sneak this redacted information into the record, without reference to the record, constitutes yet another reason why {Commerce} should determine that none of the information submitted by the CFTG is credible.”⁹⁵
- Even if, *arguendo*, the payment had been made from Mr. Hume’s personal account, Commerce has repeatedly recognized that “‘money is fungible.’”⁹⁶

⁸⁸ *Id.* at 38 and n.103 (citing CFTG’s September 17, 2019 Standing Questionnaire Response at Exhibit 13, page 1, and Exhibit 19, pages 1-2).

⁸⁹ See Harmoni’s Rebuttal Brief re CFTG at 49.

⁹⁰ *Id.* at 39-40.

⁹¹ *Id.* at 40 (“{W}e made this gift because Mr. Crawford was, at that time, having financial difficulties including the care for this wife afflicted with Alzheimer’s.”).

⁹² *Id.* at 40-41 (“Hume gave Crawford \$50,000 for the time Crawford put into the Garlic 20 AR review and for his courage in being willing to fight Harmoni.”).

⁹³ *Id.* at 41 (citing Harmoni’s August 17, 2019 Letter at 18-19 and Exhibit 37).

⁹⁴ *Id.* at 41-42 (citing CFTG’s Case Brief at 56; and Commerce’s March 10, 2020 Rejection Letter).

⁹⁵ *Id.* at 42.

⁹⁶ *Id.* (citing *Kiswok Indus. Pvt. Ltd. v. United States*, 28 CIT 774, 787 (2004) (*Kiswok Indus*); *Barden Corp. v. United States*, 144 F. Supp. 3d 1341, 1349 (CIT 2016) (*Barden*); *Notice of Final Results of Antidumping Duty Administrative Review and Final Determination Not To Revoke Order in Part: Canned Pineapple Fruit from Thailand*, 65 FR 77851 (December 13, 2000), accompanying IDM at Comment 19; and *Stainless Steel Wire Rod from Taiwan: Final Results of Antidumping Duty Administrative Review*, 66 FR 52587 (October 16, 2001), and accompanying IDM at Comment 2).

- “[T]he fact that Mr. Hume was compensated for work performed on behalf of the QTF Entity at the same time as Mr. Hume was paying Mr. Crawford for services rendered by Mr. Crawford on behalf of the QTF Entity constitutes substantial evidence of the close relationship between the QTF Entity and Mr. Crawford.”⁹⁷
- The record contains evidence that Mr. Crawford received free equipment from China, and the Mr. Crawford’s affiliate, High Mountain Garlic LLC, received garlic equipment from the QTF Entity.⁹⁸
- The CFTG’s arguments concerning Ms. Medina’s credibility are not relevant, as the information from Ms. Medina “did not form the basis of {Commerce’s} AR21 decision.”⁹⁹
- Mr. Katz did expect to be compensated by the QTF Entity for his participation in AR21. In fact, he was compensated by the QTF Entity through the loans he received from Mr. Hume.¹⁰⁰
- “Mr. Crawford’s repeated claims that he was not interested in being compensated for services rendered to the QTF Entity are not credible and undermine all of his submissions to {Commerce}.”¹⁰¹
- The CFTG’s arguments concerning Mr. Katz’s communications with Mr. Provost are not relevant to Commerce’s analysis of the NMGGC’s credibility in AR21. “Mr. Provost was not involved in Mr. Katz’s dealings with Mr. Hume and Mr. Crawford and he was not involved in preparing the documentation submitted by Mr. Katz to {Commerce}.”¹⁰²
- Commerce focused on three factors to determine that Mr. Crawford’s AR24 review request was not credible. There are additional factors supporting this determination that Commerce should consider for the final results.¹⁰³
- “Did Mr. Crawford generate his undated summary. . . so as to be able to respond to {Commerce’s} question, but in doing so, did Mr. Crawford ‘forget’ to account for his sales of garlic wreaths?”¹⁰⁴
- In an amazing coincidence, Mr. Crawford reported the exact same amount of garlic retained for replanting in 2017 and 2018.¹⁰⁵
- Mr. Crawford also failed to disclose his affiliation with High Mountain Garlic LLC. Mr. Crawford stated that the extent of his dealings with the QTF Entity “relate[d] to the trips to China” and that “no member of my family has had any business dealings with companies involved in the production and/or sale of Chinese garlic during PORs 19-24.”¹⁰⁶
- Mr. Crawford failed to advise Commerce that High Mountain Garlic LLC, which has the same address as Mr. Crawford’s El Bosque Garlic Farm, received a full container load of

⁹⁷ *Id.* at 42.

⁹⁸ *Id.* at 49.

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 50.

¹⁰¹ *Id.*

¹⁰² *Id.* at 50-51.

¹⁰³ *Id.* at 52.

¹⁰⁴ *Id.* at 53.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

garlic processing machinery and agricultural produce from Qingdao Xintianfeng Food Co., Ltd. (QXF), a member of the QTF Entity.¹⁰⁷

- Additionally, Mr. Crawford reported loaning money to both Ms. Sanford and Ms. Bateman. However, no parties provided a loan agreement or any other evidence that the money transferred was actually a loan, and neither Ms. Sanford, nor Ms. Bateman reported receiving a loan.¹⁰⁸
- Mr. Crawford’s claim that he purchased seed garlic from Ms. Sanford is also not credible and unsupported by record evidence. The CFTG’s claim that ““there was no discrepancy since the seed purchased from Ms. Sanford was paid by check from a separate bank account of Mr. Crawford’s that was not reflected in the El Bosque Garlic Farm or Mr. Crawford’s personal account,’ . . . is unsubstantiated new factual information and should be rejected.”¹⁰⁹
- Mr. Crawford’s response to Commerce’s first question is incomplete. Mr. Crawford did not disclose a loan received in 2017, nor did he report all machinery shipped from China.¹¹⁰
- Mr. Crawford’s claim that he has ““participated and will continue to participate in {Commerce’s} administrative review process without financial assistance from other parties in hope of eventually ending a practice that has corrupted the AR process. . .” is contradicted by record facts.¹¹¹
- The record shows that Mr. Crawford expected to be paid for his efforts to convince Commerce to review Harmoni.¹¹²
- Mr. Crawford, Ms. Sanford, and Mr. Bateman all failed to provide a complete response to Commerce’s request for their tax returns. In fact, Mr. Hume stated that ““the CFTG members are providing copies of tax returns that relate strictly to the standing issue – namely the Schedule F.””¹¹³
- The CFTG’s intentional decision not to provide a complete response to Commerce’s questionnaire constitutes an important reason why the CFTG’s review request should be rejected.¹¹⁴
- The CFTG has failed to point to any evidence that would establish that Mr. Crawford’s representations are credible.¹¹⁵

¹⁰⁷ *Id.* at 53-54 (citing Harmoni’s October 11, 2019 Letter at 5-6, 14-16, and accompanying Exhibits).

¹⁰⁸ *Id.* at 55 (citing CFTG’s September 17, 2019 Standing Questionnaire Response at Exhibits 3 and 15).

¹⁰⁹ *Id.* at 56 (citing CFTG’s Case Brief at 60).

¹¹⁰ *Id.* at 57-59 (citing Harmoni’s October 11, 2019 Letter at 17 and 18; and Harmoni’s February 14, 2019 Letter at Document IV, page 15 and Exhibits 18 and 19).

¹¹¹ *Id.* at 59 (citing CFTG’s September 17, 2019 Standing Questionnaire Response at Exhibit 3).

¹¹² *Id.* (citing Harmoni’s August 17, 2017 Letter at Exhibit 32).

¹¹³ *Id.* at 60-61 (citing CFTG’s September 17, 2019 Standing Questionnaire Response at 3 and 7); *see also Grain-Oriented Electrical Steel from the Czech Republic: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 58324 (September 29, 2014), and accompanying IDM at Comment 11; *Hand Trucks and Certain Parts Thereof from the People’s Republic of China: Preliminary Results and Partial Rescission of Administrative Review and Preliminary Results of New Shipper Review*, 72 FR 937 (January 9, 2007); and *Sugar from Mexico: Suspension of Antidumping Investigation*, 79 FR 78039 (December 29, 2014).

¹¹⁴ *See* Harmoni’s Rebuttal Brief re CFTG at 61.

¹¹⁵ *Id.* (citing CFTG’s Case Brief at 51-61).

- The CFTG’s attempt to portray Mr. Hume’s \$50,000 payment to Mr. Crawford as a personal gift is both irrelevant and false.¹¹⁶
- The CFTG’s claim that it “‘submitted evidence rebutting Commerce’s claim of a discrepancy {in Mr. Crawford’s purchases of seed garlic} on February 27, 2020,’ ignores the fact this letter was rejected, and removed from the record because it contained untimely filed {new factual information}.”¹¹⁷
- The CFTG’s arguments concerning Mr. Crawford’s failure to submit complete tax returns for 2016-2018 are ludicrous. “The CFTG is not entitled to a second chance to submit data which it knew was defective when initially submitted to {Commerce}.”¹¹⁸
- Mr. Crawford’s information that shows he paid for membership at the farmer’s market, was a member of the farmer’s market, and was included in the “Garlic Growers List” as a grower of garlic, does “not confirm that Mr. Crawford actually was ‘a producer of a domestic like product’ during AR24, and they do not overcome Mr. Crawford’s failure to accurately respond to {Commerce’s} August 19, 2019 questionnaire.”¹¹⁹

Ms. Sanford

- The CFTG’s attempt to discuss Ms. Sanford’s failure to submit her 2015 tax return in AR22 misses the point. Commerce “‘decided that Ms. Sanford’s request{was} not credible because she lied to {Commerce} as to the reason why she did not submit her tax return. The {CIT} has affirmed that decision.”¹²⁰
- Ms. Sanford’s did not submit her 2017 tax return, and only submitted an incomplete 2018 tax return that did not include credible information.¹²¹
- Ms. Sanford’s excuse for not submitting her 2017 tax return; “‘I need to locate a copy of my 2017 return and will submit a copy when it is located,’ constitutes a total disregard of {Commerce’s} procedures.” Ms. Sanford had one month to locate the tax return, and she had the right to ask Commerce for an extension to locate her tax return but failed to do so.¹²²
- “Ms. Sanford’s failure to keep any business documents, when she knew that such documents would be requested by {Commerce} as they had been in AR22, constitutes substantial evidence that Ms. Sanford, in fact, did not farm garlic in AR24.”¹²³
- The payment receipts submitted by Ms. Sanford do not show any reference to either of the markets at which Ms. Sanford claims to have been a regular participant. “Moreover, the record contains a statement from Arturo Quintana, Ms. Sanford’s ex-husband and neighbor, that ‘to my knowledge, Suzanne {Sanford} did not sell any garlic at any farmer’s market in 2016.’” The CFTG has not rebutted this evidence.¹²⁴

¹¹⁶ *Id.* at 61-62 (citing CFTG’s Case Brief at 56).

¹¹⁷ *Id.* at 62.

¹¹⁸ *Id.* at 62-63 (citing CFTG’s Case Brief at 58-59, and 61).

¹¹⁹ *Id.* at 63 (citing CFTG’s Case Brief at 61).

¹²⁰ *Id.* at 65 (citing CFTG’s Case Brief at 62).

¹²¹ *Id.*

¹²² *Id.* (citing CFTG’s September 17, 2019 Standing Questionnaire Response at Exhibit 20).

¹²³ *Id.* at 65-66 (citing CFTG’s Case Brief at 63).

¹²⁴ *Id.* at 66 (citing CFTG’s September 17, 2019 Standing Questionnaire at Exhibit 22; and Harmoni’s February 14, 2019 Letter at Document IV, at Exhibit 28).

- “Ms. Sanford’s failure to respond to {Commerce’s} requests for information, coupled with the material misrepresentations in the information she decided to submit, constitute sufficient reason for {Commerce} to determine that Ms. Sanford’s submissions are not credible.”¹²⁵

Mr. Bateman

- The CFTG had the right to respond to Harmoni’s October 11, 2019 submission, which noted that Mr. Bateman had failed to submit a 2018 tax return. “If the return was not available by the due date of the CFTG’s rebuttal comments, the CFTG had the right to file a timely request for an extension of time to respond.” The CFTG failed to do so, thus Commerce correctly rejected the CFTG’s untimely attempt to place the 2018 tax return on the record.¹²⁶
- Commerce correctly concluded that Mr. Bateman failed to submit any production and sales records.¹²⁷
- “[T]he record does not support Mr. Bateman’s claim that he was the manager of Morningstar Farm in November 2018, when he filed the review request; rather, the record contains evidence that he was not an employee of Morningstar Farm when the CFTG’s AR24 request was filed.”¹²⁸
- Harmoni challenged Mr. Bateman’s authority to file a review request as a producer of a domestic like product. “Mr. Bateman had the right to clarify his authority in his {questionnaire response} and again, in response to Harmoni’s comments. . . . Instead, the CFTG’s {standing questionnaire response} raised additional questions regarding this authority, and the CFTG did not respond to Harmoni’s comments.”¹²⁹
- Mr. Bateman acknowledged that Ms. Bateman travelled to China with Mr. Hume and Mr. Crawford, where she met with QTF Entity members Ruopeng Wang and Jack Bai. He also acknowledged that Mr. Hume and Mr. Wang paid for her airfare and expenses for this trip.¹³⁰
- “There exists an irreconcilable conflict of interest between the interests of the QTF Entity. . . . and legitimate ‘producers of a domestic like product’ in the United States. The fact that Ms. Bateman has a close relationship with the QTF Entity constitutes an additional reason why Mr. Bateman’s request is not credible.”¹³¹
- Even if Mr. Bateman had the authority to confirm or certify Morning Star Farm’s responses, his failure to respond to Commerce’s request for information and his material

¹²⁵ *Id.* at 67.

¹²⁶ *Id.* at 69.

¹²⁷ *Id.*

¹²⁸ *Id.* at 70 (citing CFTG’s September 17, 2019 Standing Questionnaire Response at Exhibit 18).

¹²⁹ *Id.* (citing 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 (Harmoni’s April 11, 2019 Letter); and CFTG’s September 17, 2019 Standing Questionnaire Response).

¹³⁰ *Id.* at 71.

¹³¹ *Id.*

misrepresentations constitute sufficient reasons for Commerce to continue to determine that Mr. Bateman is not credible.¹³²

Commerce’s Position: As an initial matter, although every proceeding is distinct,¹³³ we set out our findings in the 21st and 22nd administrative reviews in the *Preliminary Results* to “provide context to the analysis of the CFTG’s standing and credibility.”¹³⁴ We note that the CFTG attempts to relitigate issues from the 21st and 22nd administrative reviews in its case brief for the instant review. However, the courts have sustained Commerce’s determinations in these prior reviews.¹³⁵

In the *Preliminary Results*, we found that the material misrepresentations and discrepancies within submissions by the members of the CFTG, on the record of this administrative review, cast doubt on each individual member’s credibility. Thus, misrepresentations by each member of the CFTG taint all of the statements and information submitted on the record by the CFTG. Commerce has the authority to protect the integrity of its review proceedings and acts within its authority to rescind a review request as illegitimate *ab initio*.¹³⁶

Regarding discrepancies with respect to the \$50,000 payment to Mr. Crawford, the record shows that Hume & Associates recorded a \$50,000 payment as a business expense under the accounting category “independent contractors.”¹³⁷ In the instant review, counsel for the CFTG stated that “any payment Crawford or Katz received from me was from funds I had received for services to clients (Chinese and others) I had performed and not directed by any Chinese entity.”¹³⁸ In the CFTG’s response to the standing questionnaire, Mr. Crawford stated that “after I withdrew my review request in the Garlic 20 AR, I received a gift of \$50,000 from Mr. Hume.”¹³⁹ In that same submission, counsel for the CFTG declared, “[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.”¹⁴⁰ However, contrary to these claims, Mr. Hume’s firm recorded the \$50,000 payment made to Mr. Crawford as a business expense under “independent contractors.”¹⁴¹ The CFTG’s, and its counsel’s, story continues to conflict with Mr. Hume’s treatment of this payment, particularly the origin and ultimate reason for the \$50,000 payment. This conflict continues to

¹³² *Id.* at 71-72.

¹³³ See, e.g., *E.I. DuPont de Nemours & Co. v. United States*, 22 C.I.T. 19, 32 (January 29, 1998) (*E.I. Dupont*).

¹³⁴ See *Preliminary Results*, PDM at 8-11; see also Memorandum, “24th Administrative Review of Fresh Garlic from the People’s Republic of China: CFTG Credibility Analysis,” dated January 8, 2020 at 2-4 (CFTG’s Prelim Credibility Analysis Memo).

¹³⁵ See *N.M. Garlic Growers Coalition & El Bosque Farm v. United States*, 352 F. Supp. 3d 1281 (CIT 2018) (*NMGGC I*); see also *NMGGC II*, 953 F.3d 1358; *Coalition for Fair Trade in Garlic v. United States*, 437 F. Supp. 3d 1347 (CIT 2020) (*CFTG AR22 I*); and *Coalition for Fair Trade in Garlic v. United States*, No. 18-137, Slip Op. 20-127 (CIT, August 27, 2020) (*CFTG AR22 II*).

¹³⁶ See *NMGGC II*, 953 F.3d at 1371.

¹³⁷ See Harmoni’s February 14, 2019 Letter at Document IV (particularly referring facts relating to this issue in the primary document and Exhibit 37).

¹³⁸ See CFTG’s May 6, 2019 Letter at 2.

¹³⁹ See CFTG’s January 6, 2020 Standing Questionnaire Response at Exhibit 3.

¹⁴⁰ *Id.* at Exhibit 1.

¹⁴¹ See Harmoni’s February 14, 2019 Letter at Document IV; see also *Preliminary Results*, PDM at 13; and CFTG’s Prelim Credibility Analysis Memo at 6.

contribute to the evidence concerning the CFTG's, its counsel's, and Mr. Crawford's, lack of credibility. Furthermore, although CFTG argues that Mr. Hume's 2015 tax return confirms that this payment was not made as a business expense this tax return is not on the record of this review, and, thus, this claim is unsupported on the record.¹⁴²

Mr. Crawford also asserted that he purchased a specific amount of seed garlic in 2018 from Ms. Sanford,¹⁴³ but record evidence, which Mr. Crawford provided, does not corroborate the amount of seed garlic he claims to have purchased.¹⁴⁴ Although the CFTG claims that "{t}here was no discrepancy since the seed purchased from Ms. Sanford was paid by check from a separate bank account, of Mr. Crawford's, that was not reflected in the El Bosque Garlic Farm or Mr. Crawford's personal account,"¹⁴⁵ there is no record evidence supporting this statement. Further, even if Mr. Crawford did pay with a separate bank account not reflected in El Bosque Farm's or Mr. Crawford's personal accounts, Mr. Crawford did not report such an account in his questionnaire response, despite Commerce's request that CFTG members "report and document the total amount of investment in garlic production assets and facilities" for the POR.¹⁴⁶ This indicates that Mr. Crawford and this account may be associated with a garlic entity that has not been identified as part of the CFTG. Thus, Commerce determines that Mr. Crawford's failure to reconcile this purchase is evidence of further misrepresentations.

Finally, evidence on the record indicates that a company associated with the CFTG may have received garlic processing equipment and garlic from the QTF-Entity.¹⁴⁷ This company, which has the same address as Mr. Crawford's El Bosque Farm,¹⁴⁸ was not reported by Mr. Crawford in his response to our standing questionnaire. Specifically, question 12 asked Mr. Crawford to "{p}lease provide an explanation for any business dealings you, or any member of your family, has had with companies involved in the production and/or sale of Chinese garlic during PORs 19-24, including, but not limited to, members of the QTF-Entity. . ."¹⁴⁹ Mr. Crawford responded that he was "unfamiliar with any company involved in the production and/or sale of Chinese garlic. . . *the extent of my dealings relate to the two trips to China.*"¹⁵⁰ Evidence on the record of this review shows the shipment of garlic processing equipment came from Qingdao Xintianfeng Food Co., Ltd. (QXF), a member of the QTF-Entity.¹⁵¹ Thus, Mr. Crawford's material omission of a "business dealing" with a Chinese garlic company, especially one that is a

¹⁴² See CFTG's Case Brief at 56; see also Commerce's March 10, 2020 Rejection Letter.

¹⁴³ See CFTG's January 6, 2020 Standing Questionnaire Response at 5.

¹⁴⁴ See CFTG's Prelim Credibility Analysis Memo at 7-8; see also CFTG's January 6, 2020 Standing Questionnaire Response at Exhibit 6.

¹⁴⁵ See CFTG's Case Brief at 60.

¹⁴⁶ See Commerce's Letter, "CFTG Standing Questionnaire," dated August 19, 2019 at Attachment 2.

¹⁴⁷ See Harmoni's October 11, 2019 Letter at 2, 5-6, 14-16, and Exhibit 4.

¹⁴⁸ See Harmoni's October 11, 2019 Letter at 14-15 and Exhibit 4; see also CFTG's January 6, 2020 Standing Questionnaire Response at Exhibit 10; and 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," dated April 16, 2019 (CFTG's April 16, 2019 Letter) at Exhibit 3, page 34.

¹⁴⁹ See CFTG's January 6, 2020 Standing Questionnaire Response at Exhibit 3, page 6.

¹⁵⁰ *Id.* (emphasis added).

¹⁵¹ See Harmoni's October 11, 2019 Letter at 14-15 and Exhibit 4; see also *Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the 21st Antidumping Duty Administrative Review; 2014-2015*, 82 FR 27230 (June 14, 2017) (*Garlic AR 21 Final*), IDM at 31.

member of the QTF-Entity, after Commerce requested him to report such information, is another reason why Commerce continues to determine that all of Mr. Crawford's submissions in this review are not credible.

Regarding Ms. Sanford, as outlined in the *Preliminary Results*, Ms. Sanford claimed that she was not promised any loans from 2015 to the present.¹⁵² In that same submission, Mr. Crawford reported that he loaned Ms. Sanford money in March 2018 to assist in increasing her garlic production.¹⁵³ The CFTG attempts to explain that "Mr. Crawford never 'promised' to loan money to Ms. Sanford,"¹⁵⁴ but this statement contradicts the statement made by Mr. Crawford. In its standing questionnaire, Commerce asked each member of the CFTG to "identify any and all loans *provided to or promised to you*."¹⁵⁵ Whether originally promised or not, Mr. Crawford reported that he loaned Ms. Sanford money, and Ms. Sanford failed to report that loan in her response to Commerce. The CFTG has not identified any record evidence that explains or reconciles this discrepancy, and accordingly Commerce continues to determine this to be a misrepresentation.¹⁵⁶

In response to the employment status of Mr. Bateman, we again note that the CFTG's review request listed Mr. Bateman as the manager of Morning Star Farm. The review request was submitted to Commerce on November 28, 2018.¹⁵⁷ 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 that Morning Star Farm "had 1 employee. . . Melinda Bateman."¹⁵⁸ The fact that Mr. Bateman was not an employee of Morning Star Farm while he was requesting a review on behalf of Morning Star Farm remains unrebutted on the record. The CFTG has failed to point to any record evidence that explains how Mr. Bateman could be the manager of a company that did not employ him.

Regarding the discrepancies outlined with Mr. Bateman's company certifications, we again clarify that

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

¹⁵² See *Preliminary Results*, PDM at 13; see also CFTG's Prelim Credibility Analysis Memo at 6; and CFTG's January 6, 2020 Standing Questionnaire Response at Exhibit 19.

¹⁵³ See *Preliminary Results*, PDM at 13; see also CFTG's January 6, 2019 Standing Questionnaire Response at Exhibit 3.

¹⁵⁴ See CFTG's Case Brief at 62.

¹⁵⁵ *Id.*; see also CFTG's January 6, 2020 Standing Questionnaire Response at Exhibit 19, page 4 (emphasis added).

¹⁵⁶ See *Preliminary Results*, PDM at 13; see also CFTG's Prelim Credibility Analysis Memo at 6.

¹⁵⁷ See CFTG'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 the CFTG and Its Individual Members," dated November 28, 2018. We note that the CFTG submitted an identical review request, except for the signature, on November 30, 2018. Both review requests included a company certification that stated that Mr. Bateman was a manager of Morning Star Farm.

¹⁵⁸ See *Preliminary Results*, PDM at 13-14; see also CFTG's January 6, 2020 Standing Questionnaire Response at Exhibit 13.

Farm, calls into question the veracity of statements made by Mr. Bateman on the administrative record.¹⁵⁹

The CFTG claims that the brochure for Morning Star Farm proves that Mr. Bateman was the manager.¹⁶⁰ However, the fact remains and is supported by record evidence that he was not an employee of Morning Star Farm. Additionally, in Commerce's standing questionnaire, it requested that all members of the CFTG submit a copy of their income tax returns filed with the IRS in 2016, 2017, and 2018, including a copy of the accompanying Schedule F for each year.¹⁶¹ Mr. Bateman failed to submit the 2018 tax return and any accompanying schedules.¹⁶² Thus, we continue to find that Mr. Bateman's failure to fully respond to our request for information, along with his material misrepresentations and inconsistencies, continue to call into question the veracity of the statements made by Mr. Bateman on this record.¹⁶³

In the *Preliminary Results*, we explained that Ms. Sanford, Mr. Crawford, and Mr. Bateman each failed to provide complete responses to Commerce's request for information. Mr. Bateman failed to submit the requested 2018 tax return and any accompanying schedules,¹⁶⁴ and Ms. Sanford failed to submit her 2017 tax return and any accompanying schedules.¹⁶⁵ Additionally, neither Ms. Sanford nor Mr. Bateman provided sales or production records of any kind, and Mr. Crawford's reported sales documentation is irreconcilable.¹⁶⁶

In conclusion, we continue to find that the CFTG's submissions contain numerous inconsistencies and multiple contradictions. The CFTG's claims, and record evidence, demonstrate that none of the CFTG's submissions can be relied upon as a basis for reaching a determination that the CFTG is a "domestic interested party." Commerce continues to conclude that the CFTG's, and its individual members', inability to provide complete and accurate responses to Commerce's questionnaire taint all of the statements and information that they have submitted on the record of this review. Since we continue to determine that the entirety of the CFTG's information, including its purported garlic production information, is unusable, we continue to find that the CFTG has failed to demonstrate that it is a domestic interested party. Therefore, neither Ms. Sanford, Mr. Bateman, Mr. Crawford, nor the CFTG is an interested party pursuant to section 771(9)(C) of the Act. Because they did not have standing to request an administrative review, the CFTG's review request was invalid *ab initio*.

¹⁵⁹ See *Preliminary Results*, PDM at 14.

¹⁶⁰ See CFTG's Case Brief at 65.

¹⁶¹ See Commerce's Letter, "CFTG Standing Questionnaire," dated August 19, 2019 at Attachment 2; see also *Preliminary Results*, PDM at 15-16; and CFTG's Prelim Credibility Analysis Memo at 8-9.

¹⁶² See CFTG's January 6, 2020 Standing Questionnaire Response; see also *Preliminary Results*, PDM at 15-16; and CFTG's Prelim Credibility Analysis Memo at 8-9.

¹⁶³ See *Preliminary Results*, PDM at 13-14, 15-16; see also CFTG's Prelim Credibility Analysis Memo at 6-9.

¹⁶⁴ See *Preliminary Results*, PDM at 15; see also CFTG's January 6, 2020 Standing Questionnaire Response at Exhibit 13; and CFTG's Prelim Credibility Analysis Memo.

¹⁶⁵ See *Preliminary Results*, PDM at 15; see also CFTG's January 6, 2020 Standing Questionnaire Response at Exhibits 19 to 22.

¹⁶⁶ See *Preliminary Results*, PDM at 15; see also CFTG's Prelim Credibility Analysis Memo at 8.

Comment 2: Whether 26 U.S.C. 6103 Is Applicable

CFTG's Case Brief

- Following the *Preliminary Results*, the CFTG submitted evidence to rebut Commerce's claim of a discrepancy in the expense for seed purchases in 2018. Commerce rejected this submission as being untimely. Commerce's rejection letter "failed to address the CFTG assertion that Commerce employees violated 26 U.S.C. 6103. . . This was a legal argument and the issue arose only in connection with the preliminary determination {sic}." ¹⁶⁷
- "It is one thing when a taxpayer volunteers to provide a copy of his/her tax return to a federal agency. It is quite another when an agency requires a person to submit a tax return and then discloses {sic} a part of that return." ¹⁶⁸
- Commerce's treatment of income tax information from Mr. Crawford "presents a serious question about the release of private tax information by a federal officer or employee." ¹⁶⁹
- Both the CFTG and the petitioners "agree the release of 'return information' by an officer or employee of the United States is a violation of 26 U.S.C. 6103." ¹⁷⁰
- On February 27, 2020, the CFTG alerted Commerce that its employees had violated 26 U.S.C. 6103. "The CFTG previously expressed concern about Commerce requiring tax returns and noted that federal employees were not authorized to disclose tax information." ¹⁷¹
- On March 23, 2020, Commerce rejected the CFTG's February 27, 2020 Letter, "another instance where Commerce violated Section 782 of the Act." ¹⁷²

Harmoni's Rebuttal Brief

- The "CFTG's interpretation of 26 U.S.C. 6103 is contrary to law, {Commerce's practice}, and common sense, and should be summarily rejected." ¹⁷³
- 26 U.S.C. 6103's prohibition against disclosing tax return information "applies only to information filed with and disclosed by the IRS." ¹⁷⁴
- The CIT has affirmed Commerce's decision to rescind a new shipper review for reasons, including the fact that the respondent's customers had failed to submit their complete tax returns. ¹⁷⁵

¹⁶⁷ See CFTG's Case Brief at 60 (citing Commerce's March 23, 2020 Rejection Letter).

¹⁶⁸ *Id.* at 81.

¹⁶⁹ *Id.* at 58 (citing 26 U.S.C. 6103; and CFTG's Prelim Credibility Analysis Memo).

¹⁷⁰ *Id.* at 59 (citing 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 (Petitioners' November 15, 2019 Letter) at 4).

¹⁷¹ *Id.* at 81 (citing CFTG's September 17, 2019 Standing Questionnaire Response at 3).

¹⁷² *Id.* at 82.

¹⁷³ See Harmoni's Rebuttal Brief re CFTG at 103.

¹⁷⁴ *Id.* (citing *Stokwitz v. United States*, 831 F.2d 893, 894-97 (9th Cir. 1987) (*Stokwitz*); *Jade Trading, LLC v. United States*, 65 Fed. Cl. 188, 193-95 (2005) (*Jade Trading*); *Shell Petroleum, Inc. v. United States*, 46 Fed. Cl. 719, 722 (2000) (*Shell Petroleum*); and *United States v. All Assets Held at Bank Julius Baer & Co., Ltd.*, 142 F. Supp. 3d 37, 45-46 (D.D.C. 2015), *aff'd sub nom. United States v. All Assets Held at Bank Julius*, 234 F. Supp. 3d 115 (D.D.C. 2017)).

¹⁷⁵ *Id.* at 104-105 (citing *Haixing Jingmei Chem. Prod. Sales Co. v. United States*, 357 F. Supp. 3d 1337, 1345 (CIT 2018)).

- “If {Commerce} is allowed to request tax returns from non-parties, and to find that the failure of these persons to comply with its request constitutes evidence that a sale is not bona fide, {Commerce} is allowed to consider a discrepancy in a party’s tax return as evidence that the party is not a bona fide producer.”¹⁷⁶
- From the beginning of Commerce’s administration of the antidumping duty law through the present, Commerce “has requested income tax returns from interested parties, relied on income tax data in its decisions, and discussed tax return information in its decision memoranda.”¹⁷⁷
- Commerce reasonably concluded that reviewing the CFTG’s members’ tax returns was “a critical means of confirming whether these companies actually planted, harvested and sold garlic during the POR.”¹⁷⁸

The petitioners did not comment on this issue.

Commerce’s Position: We disagree with the CFTG’s arguments regarding 26 U.S.C. 6103. Commerce requested various tax return documents from members of the CFTG. Nothing in 26 U.S.C. 6103 prohibits us from requesting this information.¹⁷⁹ Members of the CFTG voluntarily provided tax return information under the administrative protective order (APO). Commerce analyzed the information within those returns and maintained the information under the APO. Pursuant to section 777(c) of the Act, the information was only available in any documents issued by Commerce to interested parties who were parties to the proceeding under APO, and these were parties to whom the owner of the information had already disclosed it. Since the information was only released under APO by the owners of the information, and 26 U.S.C. 6103 does not prevent Commerce from requesting the information in the first place, we disagree with CFTG’s arguments on this point. Finally, Commerce has used tax return information from interested parties in other prior proceedings and determinations.¹⁸⁰

Comment 3: Whether Sections 782(d) and 782(e) of the Act Are Applicable

CFTG’s Case Brief

- After receiving a deficient submission, Section 782(d) of the Act requires Commerce “to promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency.”¹⁸¹

¹⁷⁶ *Id.* at 105.

¹⁷⁷ *Id.* at 105-107 (citing *e.g.*, *Fireplace Mesh Panels from Taiwan; Final Determination of Sales at Less Than Fair Value*, 47 FR 15393 (April 9, 1982) (*Mesh Panels from Taiwan*); *Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 60 FR 49569 (September 26, 1995) (*Flowers from Mexico*); and *Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates*, 77 FR 64475 (October 22, 2012), and accompanying IDM (*Steel Pipe from the UAE*)).

¹⁷⁸ *Id.* at 107.

¹⁷⁹ *See, e.g.*, *Stokwitz*, 831 F.2d at 894-97; *Jade Trading*, 65 Fed. Cl. at 193-95; *Shell Petroleum*, 46 Fed. Cl. at 722; and *United States v. All Assets Held at Bank Julius Baer & Co., Ltd.*, 142 F. Supp. 3d 37, 45-46 (D.D.C. 2015), *aff’d sub nom. United States v. All Assets Held at Bank Julius*, 234 F. Supp. 3d 115 (D.D.C. 2017)

¹⁸⁰ *See, e.g.*, *Steel Pipe from the UAE*, and accompanying IDM at Comment 5; *Mesh Panels from Taiwan*, 47 FR at 15394-95; and *Flowers from Mexico*, 60 FR at 49570.

¹⁸¹ *See* CFTG’s Case Brief at 35 (citing section 782(d) of the Act).

- The Act requires that Commerce “shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of the investigations or reviews.’ . . . The first time Commerce informed Mr. Crawford of a deficiency was in connection with the preliminary results.”¹⁸²
- “Commerce erred in assuming there was an error in what Mr. Crawford stated {concerning the expense for seed purchases in 2018, } by failing to consider that the two responses could both be correct. There was no discrepancy since the seed purchased from Ms. Sanford was paid by check from a separate bank account of Mr. Crawford’s that was not reflected in the El Bosque Garlic Farm or Mr. Crawford’s personal account.”¹⁸³
- Regarding Mr. Crawford’s illegible documentation, “{n}o records were prepared for the {questionnaire response}. If Commerce {had} identified the ‘illegible’ documentation, Mr. Crawford would have provided legible words and figures.”¹⁸⁴
- Commerce did not ask for Mr. Crawford to reproduce any record, and “{a}ll records are traceable to Mr. Crawford’s 2018 tax return.”¹⁸⁵ After the CFTG submitted its questionnaire response, the CFTG twice asked Commerce to inform them of any deficiencies and provide the CFTG an opportunity to remedy or explain the deficiencies.¹⁸⁶
- The CFTG reasonably believed that its questionnaire response was adequate to support its standing, “it was not until the preliminary determination {sic} the CFTG saw that Commerce constructed a ‘credibility’ theory that would have been easily disproven by evidence if Commerce had issued a supplemental questionnaire. Specifically,
 - The CFTG could prove the \$50,000 payment to Crawford was not a ‘business expense’;
 - There was no discrepancy between Mr. Crawford’s payment to Ms. Sanford for seed garlic and his 2018 tax return;
 - the Morning Star Farm QR correctly reported in 2018 one employee; and
 - Mr. Bateman’s certifications based on his being the manager when the certificates were filed were accurate and consistent with the omission of his being an ‘employee.’”¹⁸⁷
- Section 782(e) of the Act requires that Commerce shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet *all* the applicable requirements.¹⁸⁸

¹⁸² *Id.* (citing section 782(c) of the Act).

¹⁸³ *Id.* at 60.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.* at 61.

¹⁸⁶ *Id.* at 35-26 (citing CFTG’s Letters, “24th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China – CFTG Request that Department Reject Harmoni Comments on CFTG’s Questionnaire Response,” dated October 21, 2019 at 4; and “24th Administrative Review of Fresh Garlic from the People’s Republic of China – Request for Extension of Time to Respond to the November 15, 2019 Filing by the Fresh Garlic Producers Association – filed on behalf of the CFTG,” dated November 20, 2019 at 3, n.7).

¹⁸⁷ *Id.* at 37-38.

¹⁸⁸ *Id.* at 38 (citing section 782(e) of the Act).

- In addition, 19 CFR 351.308(e) provides that Commerce will not decline to consider information that does not meet the applicable requirements, as long as the conditions listed under section 782(e) of the Act are met.¹⁸⁹
- The members of the CFTG submitted tax returns and statements by third parties along with copies of loan applications that independently supported their standing. However, Commerce did not consider this information, but chose instead to include information that had been rebutted.¹⁹⁰

Petitioners' Rebuttal Brief

- The “CFTG’s refusal to submit information requested by {Commerce} is not a deficiency within the meaning of the statute, but rather a failure to respond to {Commerce’s} questionnaire. As a result, {section 782(d) of the Act} does not apply.”¹⁹¹
- The CFTG clearly stated that it would not provide full tax returns for each member as requested by Commerce.¹⁹²
- In addition to failing to provide copies of tax returns, the CFTG’s members did not respond to Commerce’s instructions that they submit “‘documented evidence (*e.g.*, invoices, purchase orders, sales receipts) of the quantity and value of fresh garlic. . . planted, harvested, and sold’ during the POR.”¹⁹³
- Commerce did not disregard information on the record, it simply noted that the CFTG refused to supply requested information. “As a result, {section 782(e) of the Act} does not apply.”¹⁹⁴

Harmoni's Rebuttal Brief

- Commerce “is not required to afford interested parties a second chance to respond to questionnaires, when their initial response intentionally contains deficient, incomplete, or fraudulent data.”¹⁹⁵
- Harmoni brought the CFTG’s multiple discrepancies and failures to respond to Commerce’s questionnaire to the attention of both the CFTG and Commerce.¹⁹⁶
- The CFTG had the right to respond to Harmoni’s comments by filing a rebuttal, or timely filing a request for extension, by October 18, 2019. “Because the CFTG did not act in this manner, Section 782(d) {of the Act} does not apply to the facts in this case.”¹⁹⁷

¹⁸⁹ *Id.* (citing 19 CFR 351.308(e)).

¹⁹⁰ *Id.* at 38-39.

¹⁹¹ See Petitioners’ Rebuttal Brief at 37 (citing *Ta Chen Stainless Steel Pipe, Inc. v. United States*, 298 F.3d 1330, 1338 (Fed. Cir. 2002) (*Ta Chen*) (“where . . . a party informs Commerce that it will not provide the information requested, Commerce is not required to give another formal notice that the complete failure to respond does not comply with the request.”); and *Am. Tubular Prods., LLC v. United States*, No. 13-00029, Slip Op. 14-116 at 21).
¹⁹² *Id.* at 38 (citing CFTG’s September 17, 2019 Standing Questionnaire Response at 2-3).

¹⁹³ *Id.* (citing CFTG’s September 17, 2019 Standing Questionnaire Response at 2-3, Exhibit 3, page 1, Exhibit 13, page 1, and Exhibit 19, page 1).

¹⁹⁴ *Id.* at 38-39 (citing *Preliminary Results*, PDM at 15).

¹⁹⁵ See Harmoni’s Rebuttal Brief re CFTG at 88 (citing *Papierfabrik Aug Koehler SE v. United States*, 843 F.3d 1373, 1384 (Fed. Cir. 2016) (*Papierfabrik Koehler*); and *Countervailing Duty Investigation of Stainless Steel Sheet and Strip from the People’s Republic of China: Preliminary Affirmative Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 81 FR 46643 (July 18, 2016), and accompanying PDM)).

¹⁹⁶ *Id.* at 89 (citing Harmoni’s October 11, 2019 Letter at 2-10).

¹⁹⁷ *Id.*

- The CFTG’s claim that “‘it was not until the preliminary determination the CFTG saw that Commerce constructed a “credibility” theory’ distorts the record in AR24.”¹⁹⁸
- “The CFTG was not allowed to pick and choose the questions it wanted to answer and to receive a second chance {from Commerce}.”¹⁹⁹
- Finally, the CFTG’s claim that it had the right to submit NFI to rebut Commerce’s conclusions in the PDM is absurd. Commerce “did not place any NFI on the record when it issued its Preliminary Results; rather, it analyzed the veracity of NFI submitted by parties.”²⁰⁰
- If Commerce were to accept the CFTG’s argument, it would allow all parties to submit NFI in response to Commerce’s preliminary determinations, which “is directly contrary to the plain meaning of {Commerce’s} regulations.”²⁰¹
- A participant in a proceeding before Commerce “cannot pick and choose information it wishes to present to {Commerce}.”²⁰²
- “The CFTG was responsible for creating a record to support its claims and cannot now blame {Commerce} for failing to request additional information.”²⁰³
- The CFTG also failed to notify Commerce, “as required by Section 782(c)(1) {of the Act, } of an inability ‘to submit the information requested in the form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, ‘ prior to responding to {Commerce’s} questionnaire.”²⁰⁴
- Despite knowing that Commerce would request tax returns and production and sales records, “Ms. Sanford and Mr. Bateman did not submit a single production or sales document, and the documentation submitted by Mr. Crawford did not come close to resembling documents maintained by a commercial farmer.”²⁰⁵

Commerce’s Position: Section 782(d) of the Act requires Commerce “to promptly inform the person submitting the response of the nature of the deficiency and ... to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency.” However, Commerce does not have to do so when an interested party’s response is intentionally incomplete. The Federal Circuit has stated that “nothing in {section 782(d) of the Act} compels Commerce to treat intentionally incomplete data as a ‘deficiency’ and then to give a party that has intentionally submitted incomplete data an opportunity to ‘remedy’ as well as to ‘explain.’”²⁰⁶ Further, the Court has stated that “{t}he consequence of such a reading {of section 782(d) of the Act} would be to permit respondents to submit fraudulent data with the knowledge

¹⁹⁸ *Id.* at 90.

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.* at 90-91.

²⁰² *Id.* at 91 (citing *Brother Indus., Ltd. v. United States*, 771 F. Supp. 374, 383 (CIT 1991) ; *Ansaldo Componenti, S.p.A. v. United States*, 628 F. Supp. 198, 205 (CIT 1986) ; *Mitsubishi Heavy Indus., Ltd. v. United States*, 833 F. Supp. 919, 925 (CIT 1993); *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 53387 (September 11, 2006); and *Certain Iron Mechanical Transfer Drive Components from Canada: Final Affirmative Determination of Sales at Less Than Fair Value*, 81 FR 75039 (October 28, 2016), and accompanying IDM at Comment 1).

²⁰³ *Id.* (citing *Yantai CMC Bearing Co. v. United States*, 203 F. Supp. 3d 1317, 1324-25 (CIT 2017)).

²⁰⁴ *Id.* (citing section 782(c)(1) of the Act).

²⁰⁵ *Id.* at 91-92.

²⁰⁶ See *Papierfabrik Koehler*, 843 F.3d at 1384.

that, should their misconduct come to light, they can demand an opportunity to remedy their intentionally deficient data and avoid the otherwise-authorized adverse inferences.”²⁰⁷

In the standing questionnaire to the CFTG, Commerce requested that each member provide “a copy of the income tax returns (Forms 1040) filed with the IRS in 2016, 2017, and 2018, including a copy of the Schedule F filed with the 2016, 2017 and 2018 tax returns.”²⁰⁸ In its response to the standing questionnaire, the CFTG stated “the CFTG members are providing copies of tax returns that relate strictly to the standing issue – namely the Schedule F.”²⁰⁹ As mentioned in the *Preliminary Results*, and in Comment 2 above, Mr. Bateman failed to submit a 2018 tax return and any accompanying schedules, and Ms. Sanford failed to submit her 2017 tax return and any accompanying schedules. Further, the fact that CFTG told Commerce that it was not going to provide the documents that Commerce requested, and then did not provide them, indicates that the CFTG would not have provided them even if Commerce were to request them a second time, pursuant to section 782(d) of the Act.²¹⁰ Finally, neither Mr. Bateman nor Ms. Sanford provided any evidence of sales or production records as requested by Commerce.²¹¹ Allowing Mr. Bateman or Ms. Sanford a second chance to provide the requested information would be akin to allowing them to give themselves an extension of time to submit the information requested by Commerce, and 19 CFR 351.302 requires a party to request an extension if it is unable to provide Commerce with information that it requested by an established deadline.

In the *Preliminary Results*, Commerce considered the information that was timely submitted by the CFTG, and found that the omissions, material misrepresentations, and contradictions within that information call into question the veracity of every submission made by each member of the CFTG.²¹² Accordingly, Commerce did not violate sections 782(d) and 782(e) of the Act, and the CFTG’s review request is invalid *ab initio*.

Comment 4: Whether Section 751 of the Act Requires Country-wide Reviews

CFTG’s Case Brief

- Commerce’s partial reviews are not a permissible construction of the statute. Commerce is required to conduct a review of all of the exporters if a review request is filed. “By allowing parties to select who is reviewed and who is excused from review, Commerce has converted the AD law into a private remedy statute.”²¹³
- Neither Commerce’s notice of opportunity to request an administrative review nor section 351.213(d) state that a review request can be withdrawn in part. Even if section

²⁰⁷ *Id.*

²⁰⁸ *See, e.g.*, CFTG’s September 17, 2019 Standing Questionnaire Response at Exhibit 3, page 3.

²⁰⁹ *Id.* at 3.

²¹⁰ *See Ta Chen*, 298 F.3d at 1338 (“where . . . a party informs Commerce that it will not provide the information requested, Commerce is not required to give another formal notice that the complete failure to respond does not comply with the request.”).

²¹¹ *See* CFTG’s Prelim Credibility Analysis Memo at 8.

²¹² *See Preliminary Results*, PDM at 11-16; *see also* CFTG’s Prelim Credibility Analysis Memo.

²¹³ *See* CFTG’s Case Brief at 22.

351.213(d) allowed for partial withdrawals, it would violate “the express terms of Section 751(a)(2)” of the Act.²¹⁴

- In the Statement of Administrative Action (SAA) following the Uruguay Round Agreements Congress confirmed the application of country-wide principles in AD cases, which is reflected in section 351.221(a).²¹⁵
- Commerce has two broad roles in the administration of the AD scheme: “(1) investigation and publication of an antidumping order; and (2) periodic reviews of antidumping orders.”²¹⁶
- Section 751 of the Act does not specify who may file an administrative review request. Section 351.213 of Commerce’s regulations provides rules for interested parties to request administrative reviews. However, section 351.213 is a result of a practice developed by Commerce that predates the URAA.²¹⁷
- The 90-day withdrawal period used to coincide with the time when interested parties could expect Commerce to issue the results of the previous AR, with the presumption being that if the parties were satisfied with the previous AR’s results, they would not want to continue with the following AR.²¹⁸
- Portions of section 351.213 exceed statutory authority. Specifically, Commerce allowed producers and exporters to select if a review would occur, and who would and would not be included in the review. This overstepped Commerce’s authority, violated the U.S. Constitution, the Administrative Procedures Act, and *Chevron*.²¹⁹
- This resulted in domestic producers forming alliances with foreign exporters, which Harmoni’s concedes took place under this Order in the form of settlement agreements.²²⁰
- Section 351.213(b)’s requirement mandating that a request must be accompanied by a statement describing why the requestor desires the Secretary to review those particular exporters or producers. This substantive requirement is not authorized by Congress.²²¹
- The requirement creates a barrier to an interested party’s ability to exercise a Congressionally provided right.²²²
- In this review, the CFTG followed section 351.213(b) to the letter: “they have clearly and explicitly stated the reasons they seek a review in their initial request for review.”²²³
- Section 351.213(b) does not permit Commerce to issue questionnaires to further explore the interested party’s reasons for requesting an administrative review.²²⁴
- Commerce’s concept of partial rescissions is not supported by the Act and allows Harmoni and the petitioners to manipulate and erode the integrity of the antidumping system.²²⁵

²¹⁴ *Id.* at 22-23.

²¹⁵ *Id.* at 24 (citing the Uruguay Round Agreements Act, Pub. L. No. 103-465, 108 Stat. 4809 (URAA)).

²¹⁶ *Id.* (citing sections 731, 732, and 751 of the Act).

²¹⁷ *Id.* at 25.

²¹⁸ *Id.*

²¹⁹ *Id.* at 26 (citing *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 US 837, 842-43 (1984) (*Chevron*)).

²²⁰ *Id.*

²²¹ *Id.*

²²² *Id.* at 27; *see also* U.S. Const. amend. XIV Section 2.

²²³ *See* CFTG’s Case Brief at 27.

²²⁴ *Id.*

²²⁵ *Id.* (citing 19 CFR 351.213; and sections 751 and 777A of the Act).

- The argument that Section 777A of the Act provides authority for section 351.216(d) of Commerce’s regulations is without merit. Section 777A of the Act allows Commerce to select a limited number of exporters to represent the whole.²²⁶
- “All exporters covered by a given AD Order must still be affected by the review, either as a mandatory respondent, or as an exporter receiving the ‘separate rate’ or the ‘all others’ rate.”²²⁷
- Section 777A of the Act provides that the only role for domestic interested parties is to consult regarding the method used to select exporters for use in sampling.²²⁸
- Both the Federal Circuit and the CIT have stated, “‘voluntary respondents, like mandatory respondents, cannot unilaterally dictate their level of participation once accepted for examination, since, otherwise, the ... process would be subject to potential manipulation by companies seeking individual review and then declining to proceed if review started to look unfavorable.’”²²⁹
- In its ruling concerning the 21st review of this order, the CIT’s reliance on *Floral Trade* is inapposite for two reasons. *Floral Trade* dealt with a regulation that no longer exists (353.53a), and the withdrawal loophole did not exist when *Floral Trade* was decided.²³⁰
- In addition, the CIT misunderstood the NMGGC’s interpretation of the statute. “*Glycine & More* did not address whether it was appropriate for the withdrawn exporter’s margin to default to a prior review period.”²³¹
- Commerce’s allowance, through section 351.213(d), of domestic parties to remove significant exporters from a review ensures that the sampling methodology applicable to the remaining exporters will be inaccurate.²³²
- 19 CFR 351.213 ensures that Congress’ desire for proper sampling is subverted. The removal of the largest exporter from the pool of possible respondents renders it impossible for Commerce to select exporters and producers accounting for the largest volume under section 1677(c)(2)(B) {sic} of the Act.²³³
- “Removing any exporters, *let alone* the largest, from the pool of candidates runs against Congress’ intent that the data should be ‘representative of all exporters.’”²³⁴
- Section 751(a) of the Act is perfectly clear, “once Commerce receives a request to conduct an AR, Commerce must review and Commerce must determine the amount of the antidumping duty for each entry. No exporter is exempt from a determination of the applicable antidumping duty unless the {sic} Commerce revokes the AD Order in whole or in part.”²³⁵

²²⁶ *Id.* at 28-29; *see also* section 777A of the Act; and 19 CFR 351.213.

²²⁷ *See* CFTG’s Case Brief at 29.

²²⁸ *Id.* (citing section 777A(b) of the Act).

²²⁹ *Id.* (citing *Viet I-Mei Frozen Foods Co. v. United States*, 839 F.3d 1099 (Fed. Cir. 2016); and *Zhejiang Native Produce & Animal By-Products Imp. & Exp. V. United States*, 637 F. Supp. 1260, 1264 (CIT 2009)).

²³⁰ *Id.* at 29-30 (citing *NMGGC I*; and *Floral Trade Council v. United States*, 888 F.2d 1366, 1369 (Fed. Cir. 1989) (*Floral Trade*)).

²³¹ *Id.* at 30; *see also Glycine & More*, 880 F.3d at 1337.

²³² *See* CFTG’s Case Brief at 30-31; *see also Albemarle v. United States*, 821 F.3d 1345, 1352 (Fed. Cir 2016) (*Albemarle*) (The SAA shows that Congress wanted sampling results to be “reasonably reflective of potential dumping margins.”).

²³³ *See* CFTG’s Case Brief at 31.

²³⁴ *Id.* (citing *Albemarle*, 821 F.3d at 1352).

²³⁵ *Id.* at 32.

- No provision in the AD law grants an exporter/producer a right to export its merchandise to the United States without being subject to the potential assessment of AD duties.²³⁶
- Unlike the injury portion of AD investigations, the Act merely requires that AR requests be submitted by a domestic interested party that is a producer or wholesaler.²³⁷
- Commerce’s allowance of rescissions after the publication of a notice of initiation of review is in violation of the AD law.²³⁸
- 19 CFR 351.213(d)(1) is not entitled to deference under the two-step analysis established in *Chevron*. “This inquiry is essentially one to question the reasonableness of Commerce’s interpretation {of the statute}.”²³⁹
- Commerce must conduct a full and fair inquiry into any matter with the potential to impact antidumping duties, and Commerce has the duty of developing a full and fair record in accordance with section 751 of the Act.²⁴⁰

Petitioners’ Rebuttal Brief

- The CFTG’s argument that the statute requires Commerce to conduct an administrative review of all exporters is wrong and should be rejected.²⁴¹
- The CFTG seems to have ignored the 1984 amendment of the statute that excused Commerce from having to review every entry of subject merchandise. The amended statute provides that Commerce “conduct an administrative review of an antidumping or countervailing duty order ‘if a request for such a review has been received.’”²⁴²
- The CFTG failed to recognize a fifth category of exporter, “exporters for which no interested party has filed a review request. CFTG ignores the predicate act that first must occur in order for an exporter to be subject to an administrative review: an interested party must request an administrative review of that exporter.”²⁴³
- Shipments of subject merchandise exported to the United States by a company for which no interested party request an administrative review are not analyzed by Commerce.²⁴⁴
- The CFTG’s arguments concerning 19 CFR 351.213(d) are also wrong and should be rejected by Commerce.²⁴⁵
- “Commerce’s promulgation of a regulation to permit interested parties to withdraw requests for administrative reviews. . . is fully consistent with Congress’ objective in amending the statute.”²⁴⁶

²³⁶ *Id.* (citing *Board of Trustees of University of Illinois v. United States*, 289 U.S. 48, 57 (1933); and *Totes-Isotoner Corp. v. United States*, 594 F.3d. 1346, 1357 n.9 (Fed. Cir. 2010)).

²³⁷ *Id.*

²³⁸ *Id.* at 33 (citing *Floral Trade*, 888 F.2d at 1366 (“The regulation could not be upheld if it conflicted with clearly discernible legislative intent; however, even if the legislative intent is not contravened, this court must still determine whether {Commerce’s} interpretation is reasonable.”)).

²³⁹ *Id.* at 33-34 (citing *Chevron*, 467 U.S. 837; and *Fujitsu General Ltd. v. United States*, 88 F.3d 1034, 1038 (Fed. Cir. 1996)).

²⁴⁰ *Id.* at 34 (citing *Hyundai Electronics Industries Co., Ltd. v. United States*, 342 F. Supp. 2d 1141, 1152 (CIT 2004)).

²⁴¹ See Petitioners’ Rebuttal Brief at 27 (citing CFTG’s Case Brief at 22).

²⁴² *Id.* at 27-28 (citing section 752(1) of the Act).

²⁴³ *Id.* at 29 (citing section 752(1); and *NMGGC I*, 352 F. Supp. 3d at 1304).

²⁴⁴ *Id.*; see also *Mitsubishi Electronics America, Inc. v. United States*, 44 F.3d at 973, 976-77 (Fed. Cir. 1994) (*Mitsubishi Electronics*); and *Perry Chem. Corp. v. United States*, 375 F. Supp. 3d 1324 (CIT 2019).

²⁴⁵ See Petitioners’ Rebuttal Brief at 30 (citing CFTG’s Case Brief at 22).

²⁴⁶ *Id.* at 31 (citing *NMGGC I*, 352 F. Supp. 3d at 1303-4).

- Additionally, the Federal Circuit has affirmed a decision by Commerce “to rescind an administrative review where the withdrawal of the review request was filed with the agency after the expiration of the 90-day period identified in { 19 CFR 351.213(d)(1)}.”²⁴⁷
- In *NMGGC I*, the CIT also ruled that the argument that Commerce is bound to conduct administrative reviews of all entries of subject merchandise is inconsistent with the Federal Circuit’s holdings in *Floral Trade Council* and *Transcom*.²⁴⁸
- The Federal Circuit has also already rejected the CFTG’s argument that Commerce’s regulation (19 CFR 351.213(b)) is contrary to the Constitution and the Administrative Procedures Act.²⁴⁹

Harmoni’s Rebuttal Brief

- The CIT expressly rejected identical arguments raised by the NMGGC in AR21, stating “Commerce has authority to conduct reviews limited to named companies and to rescind reviews when the request has been withdrawn.”²⁵⁰
- Additionally, the Federal Circuit declined to decide this issue, reasoning that since the NMGGC “stands in the shoes of a party who failed to participate in the administrative review. . . we will not entertain its claim that Commerce erred in rescinding the review of Harmoni that was requested by Harmoni and the FGPA.”²⁵¹
- In this proceeding, Commerce should either reject the CFTG’s arguments, on the merits, in line with the CIT’s finding in AR21, “or it should refrain from issuing a decision,” since the issue was raised by an entity, the CFTG, who was not party to the proceeding,” in line with the Federal Circuit’s decision in AR21.²⁵²
- “There is no question that U.S. law does not expressly preclude {Commerce} from limiting an Annual Review to respondents for whom a review has been requested (and not withdrawn within 90 days of the request being filed).”²⁵³
- “By requiring that a person explain why an interested party is filing a review request {Commerce} prevents persons from using the process as an extortion tool or to thwart the law’s purpose of protecting legitimate domestic producers (e.g., FPGA), by allowing foreign exporters (e.g., QTF Entity) to pay strawmen (e.g., CFTG) to advance their own longstanding interests (e.g., “to get the DOC to go after Harmoni”).”²⁵⁴

²⁴⁷ *Id.* at 31-32 (citing *Glycine & More*, 880 F.3d at 1338); see also *NMGGC I*, 352 F. Supp. 3d at 1304 (“If NMGGC’s interpretation of the statute is correct, that once initiated, a review may not be rescinded by Commerce, then the Federal Circuit could not have reached the result it did {in *Glycine & More* and} Commerce would have been statutorily required to complete the review.”).

²⁴⁸ See Petitioners’ Rebuttal Brief at 32 (citing *NMGGC I*, 352 F. Supp. 3d. at 1305-6 (citing *Floral Trade*, 888 F.2d at 1366) and n.36 (citing *Transcom, Inc. v. United States*, 182 F.3d 876, 880-83 (Fed. Circ. 1999) (*Transcom*))).

²⁴⁹ *Id.* at 33 (citing *NMGGC II*, 953 F.3d at 1370).

²⁵⁰ See Harmoni’s Rebuttal Brief re CFTG at 84 (citing *NMGGC I*, 352 F. Supp. 3d at 1306).

²⁵¹ *Id.* at 84-85 (citing *NMGGC II*, 953 F.3d at 1373).

²⁵² *Id.* at 85.

²⁵³ *Id.*

²⁵⁴ *Id.* at 86-87 (citing *Wooden Bedroom Furniture from the People’s Republic of China: Final Results and Final Rescission in Part*, 77 FR 51754 (August 27, 2012); and Harmoni’s February 14, 2019 Letter at Document I, Attachment One (Harmoni’s AR 21 Case Brief) at 23-53).

- The CFTG’s “discussion of {Commerce’s} authority to allow the FGPA and Harmoni to withdraw their review requests does not reference *NMGGC I* and *NMGGC II*,” which constitutes another attempt by the CFTG to mislead Commerce.²⁵⁵
- The CIT has already “chastised CFTG’s counsel, for his ‘lack of candor, ‘feigned ignorance about the underlying facts’ and failure ‘to cite applicable precedent in which counsel was the attorney of record.’”²⁵⁶
- Commerce “should consider counsel’s continued pattern of misrepresentations – e.g., failure to cite directly controlling legal precedent – in its analysis of the CFTG’s claim in AR24.”²⁵⁷

Commerce Position:

Initially, Commerce determines that the CIT has rejected identical arguments to those that the CFTG raises in its instant case brief. Specifically, the CIT has held that “Commerce has authority to conduct reviews limited to named companies and to rescind reviews when the request has been withdrawn.”²⁵⁸ Furthermore, the Federal Circuit has confirmed that where Commerce “has determined a review request is illegitimate *ab initio*, the requesting entity’s standing to participate in the review ‘has been rendered null and void.’”²⁵⁹ Since the CFTG “stands in the shoes of a party who failed to participate in the administrative review,”²⁶⁰ Commerce is not required to address the CFTG’s arguments concerning this issue. Nevertheless, because this argument touches upon Commerce’s authority to partially discontinue this review, we make the following observations. With respect to Commerce’s governing law, section 751 of the Act provides that “if a request for such a review has been received,” Commerce “shall. . . review and determine. . . the amount of any antidumping duty.” 19 CFR 351.213(b) provides that

{e}ach year during the anniversary month of the publication of an antidumping or countervailing duty order, a domestic interested party or an interested party described in section 771(9)(B) of the Act. . . may request in writing that {Commerce} conduct an administrative review under section 751(a)(1) of the Act of specified individual exporters or producers covered by an order. . . if the requesting person states why the person desires {Commerce} to review those particular exporters or producers.

The Act is silent as to how Commerce should proceed if a review request is withdrawn.²⁶¹ Still, 19 CFR 351.213(d)(1) states that Commerce “will rescind an administrative review under this section, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.”

²⁵⁵ *Id.* at 87.

²⁵⁶ *Id.* at 87-88 (citing *Premier Trading, Inc. v. United States*, 144 F. Supp. 3d 1354, 1360 (CIT 2016)); *see also NMGGC I*, 352 F. Supp. 3d at 1307, n.38 (“Representing both the domestic producer and foreign exporter simultaneously in the same proceeding would undoubtedly raise conflict of interest concerns . . . the court raised these ethical concerns with Mr. Hume during oral argument, but did not receive a satisfactory response.”).

²⁵⁷ *See* Harmoni’s Rebuttal Brief re CFTG at 88.

²⁵⁸ *See NMGGC I*, 352 F. Supp. 3d at 1306; *see also CFTG AR22 I*, 437 F. Supp. 3d at 1361.

²⁵⁹ *See NMGGC II*, 953 F.3d at 1373.

²⁶⁰ *Id.*

²⁶¹ *See NMGGC I*, 352 F. Supp. 3d at 1297.

19 CFR 351.213(d)(1) has also been held consistent with Congress' legislative intent.²⁶² Originally, section 751(a) of the Act provided for mandatory annual reviews of antidumping duty orders,²⁶³ but in 1984 Congress amended the statute to require review only when the agency received a request or upon the agency's initiative.²⁶⁴ The legislative history associated with the amendments indicates that Congress recognized that an increasing number of outstanding orders subject to review each year imposed an unnecessarily heavy burden on Commerce's resources.²⁶⁵ The amendment was intended to reduce the administrative burden on Commerce of automatically having to review every outstanding order even though circumstances did not warrant it, or parties to the case are satisfied with the existing order.²⁶⁶ Thus, Congress' legislative intent was to reduce the burden on Commerce. Commerce's withdrawal and rescission regulation, 19 CFR 351.213(d), is consistent with the Act and the legislative intent.²⁶⁷ For these reasons, the CFTG's arguments, claiming that 19 CFR 351.213 conflicts with the Act,²⁶⁸ are misplaced.

Additionally, the CFTG argues that section 751 of the Act requires that Commerce review every exporter and/or producer every time a review of an order is requested and determine an antidumping duty for each entry.²⁶⁹ This argument is unpersuasive. Section 751(a)(2) of the Act requires Commerce, in determining a dumping margin, to determine the normal value and export price of each entry of subject merchandise.²⁷⁰ However, nothing in this section indicates that Commerce must conduct a review of all entries subject to the order.²⁷¹ Accordingly, Commerce determines that it is not required to conduct a review for each exporter and/or producer subject to an order on the basis of the language in section 751 of the Act.

Next, the CFTG argues that 19 CFR 351.213(d) "does not authorize a partial withdrawal."²⁷² However, this statement is inaccurate. 19 CFR 351.213(d)(1) provides that Commerce will rescind an administrative review "in whole or in part," if a party that requested the review withdraws its request within 90 days. A party's ability to withdraw a review in part logically precedes a partial rescission because the regulation establishes that Commerce may rescind a review in whole or in part. This argument, accordingly, is not supported by the language of 19 CFR 351.213(d)(1). Similarly, section 751(a)(1) provides that Commerce shall conduct a review

²⁶² *Id.* at 1302-5.

²⁶³ *See Floral Trade Council of Davis, Cal. v. United States*, 888 F.2d 1366, 1369 (Fed. Cir. 1989) (*Floral Trade Council of Davis*).

²⁶⁴ *See NMGGC I*, 352 F. Supp. 3d at 1303 (citing *Floral Trade Council of Davis*, 888 F.2d at 1369; and Trade and Tariff Act of 1984, 98 Stat. 2948, 3031)

²⁶⁵ *Id.* (citing H.R. Rep. No. 98-725, at 22-23 (1984), as reprinted in 1984 U.S.C.C.A.N. 5127, 5149).

²⁶⁶ *Id.*

²⁶⁷ *See NMGGC I*, 351 F. Supp. 3d at 1302-5; *see also CFTG AR22 I*, No. 18-137, slip op. 20-48 at 26-27 (April 14, 2020); and *Glycine & More*, 107 F. Supp. 3d at 1365, *aff'd*, 880 F.3d 1335 (affirming the CIT's decision to remand a determination because Commerce could have reasonably granted an extension request to allow a party to withdraw its review request).

²⁶⁸ *See* CFTG's Case Brief at 22, 25-31.

²⁶⁹ *Id.* at 32.

²⁷⁰ *See* section 751(a)(2)(A) of the Act.

²⁷¹ *See NMGGC I*, 352 F. Supp. 3d at 1304-5.

²⁷² *See* CFTG's Case Brief at 22-23.

upon request, but nothing in this section suggests that Commerce must review the order as a whole either.²⁷³

The CFTG also argues that section 777A of the Act does not condone partial rescissions and that this section further supports its claim that Commerce must review every exporter and/or producer once a review is requested.²⁷⁴ Nothing in section 777A of the Act suggests that Commerce is required to expand its review to include exporters and/or producers for which a review was not requested.²⁷⁵ For the foregoing reasons, Commerce’s regulations challenged by the CFTG are consistent with the Act, Commerce is not required to review every exporter and/or producer each time a review is requested, and Commerce acts within its authority when it partially rescinds an administrative review.

Finally, the CFTG provides various interpretations of Commerce’s antidumping procedures and practices. Although we address its arguments here, Commerce notes that it does not intend to condone any of the CFTG’s interpretations that it does not address directly in its position.

Comment 5: Whether Commerce May Rescind a Review for a Company that has Not Demonstrated the Absence of *De Jure* and *De Facto* Government Control

CFTG’s Case Brief

- Commerce partially rescinded this review with respect to eight companies for which the petitioners timely withdrew their review request.²⁷⁶
- As these companies did not qualify for a separate rate, they should be subject to the China-wide rate. “Exporters named in the initiation of an AD administrative review that do not establish that they are independent of government control are considered part of the NME entity.”²⁷⁷
- Furthermore, “In {ARs} of AD orders from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, {Commerce} will issue a final decision indicating that the company in question is part of the NME Entity.”²⁷⁸
- Commerce partially rescinded the review with respect to those eight companies, and the rescission was not a preliminary decision. Commerce did not indicate what the assessment rate or cash deposit rate going forward would be for those companies, which is required by section 751(a)(1) of the Act.²⁷⁹

Petitioners’ Rebuttal Brief

²⁷³ *Id.*

²⁷⁴ See CFTG’s Case Brief at 28-29, 32.

²⁷⁵ See *NMGGC I*, 351 F. Supp. 3d at 1305.

²⁷⁶ See CFTG’s Case Brief at 40.

²⁷⁷ *Id.* at 41 (citing *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, 65969 (November 4, 2013) (*Change in NME Practice*)); see also 19 CFR 351.107(d) (providing that “in an antidumping proceeding involving imports from a nonmarket economy country, ‘rates’ may consist of a single dumping margin applicable to all exporters and producers.”).

²⁷⁸ See CFTG’s Case Brief at 41-42 (citing *Change in NME Practice*, 78 FR at 65970).

²⁷⁹ *Id.* at 42.

- “Contrary to CFTG’s assertions, because the petitioners withdrew their request for an administrative review of the eight entities. . . , and no other review request of these entities remained, none of these entities is subject to this segment.”²⁸⁰
- As a result, “it is as if no review was requested of these entities and any shipments of subject merchandise by those entities are liquidated as entered.”²⁸¹

Harmoni’s Rebuttal Brief

- This issue is not relevant as to whether Commerce should rescind the CFTG’s request to review Harmoni. Since the Federal Circuit declined to consider NMGGC’s arguments that were not relevant to Commerce’s credibility analysis, Commerce should apply the same principle here.²⁸²
- Additionally, this issue does not apply to Harmoni. “In AR24, Harmoni timely filed an SRA, and complete and accurate responses to {Commerce’s questionnaires}. Record evidence confirms that Harmoni would have been entitled to a separate rate if AR24 had not been rescinded.”²⁸³

Commerce’s Position: The Federal Circuit, has confirmed that where Commerce “has determined a review request is illegitimate *ab initio*, the requesting entity’s standing to participate in the review ‘has been rendered null and void.’”²⁸⁴ Since the CFTG “stands in the shoes of a party who failed to participate in the administrative review,”²⁸⁵ Commerce is not required to address the CFTG’s arguments concerning this issue. Nevertheless, because this argument touches upon Commerce’s ability to rescind an administrative review, we make the following observations.

Commerce may rescind an administrative review for a respondent exporter or producer, even if the company has not demonstrated an absence of *de jure* or *de facto* government control. First, pursuant to section 751 of the Act, Commerce only conducts administrative reviews of antidumping and countervailing duty orders “if a request for such a review has been received.” In other words, if Commerce does not receive a review request, then it does not review a company. Accordingly, if no party submits a review request of any company, then Commerce does not conduct an administrative review.

Second, Commerce’s regulations permit Commerce to rescind an administrative review for several reasons. Specifically, under 19 CFR 351.213(d)(1), Commerce “will rescind an administrative review under this section, in whole or in part, if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.” Section 19 CFR 351.213(d)(3) also indicates that Commerce “may rescind an administrative review, in whole or only with respect to a particular exporter or producer, if {Commerce} concludes that, during the period covered by the review, there were no entries,

²⁸⁰ See Petitioners’ Rebuttal Brief at 35.

²⁸¹ *Id.* at 36 (citing *Mitsubishi Electronics*, 44 F.3d at 976-77).

²⁸² See Harmoni’s Rebuttal Brief re CFTG at 99.

²⁸³ *Id.*

²⁸⁴ See *NMGGC II*, 953 F.3d at 1373.

²⁸⁵ *Id.*, 953 F.3d at 1373.

exports, or sales of the subject merchandise.”²⁸⁶ None of these provisions distinguish between administrative reviews of market economy countries or non-market economy countries.

CFTG argues that “{b}ecause these entities did not qualify for a separate rate. . . {they} are subject to the {China}-wide rate.”²⁸⁷ In proceedings involving non-market economy countries, Commerce relies on a rebuttable presumption that all companies within China are subject to government control and, thus, should be assessed a single antidumping duty rate.²⁸⁸ It is Commerce’s standard policy to assign all exporters of the merchandise subject to review in non-market economy countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to its exports.²⁸⁹ To establish whether a company is sufficiently independent to be eligible for a separate, company-specific rate, Commerce analyzes each exporting entity in a non-market economy country under the test established in *Sparklers*²⁹⁰ and further clarified in *Silicon Carbide*.²⁹¹ However, if Commerce determines that a company is wholly foreign-owned or located in a market economy country, then a separate-rate analysis is not necessary to determine whether it is independent from government control.

In the *Initiation Notice*, Commerce stated that its policy is “to assign all exporters of merchandise *subject to an administrative review* in {a non-market economy country}” a “single antidumping duty deposit rate.”²⁹² Accordingly, if a company is not subject to an administrative review, then Commerce will not assess whether it will be granted separate rate status. Here, Commerce has determined that the CFTG’s review requests were invalid *ab initio*. Thus, there was no review request for the relevant companies in the first instance, and Commerce’s policy does not dictate that it review whether they are part of the country-wide entity. Finally, the Courts have confirmed that Commerce may rescind a review where a requesting party has made misrepresentations on the record of Commerce’s review, and thus, that the party’s request for review is invalid *ab initio*.²⁹³ Here, this is the case, and Commerce

²⁸⁶ Commerce’s ability to rescind reviews in part has been sustained by the CIT. See *NMGGC I*, 352 F. Supp. 3d 1281 (CIT 2018); see also *CFTG AR22 I*, 437 F. Supp. 3d at 1361; and *CFTG AR22 II*, No. 18-137, Slip Op. 20-127 at 5-6. Additionally, the CIT, sustaining Commerce’s redetermination to rescind an administrative review, has been affirmed by the Federal Circuit. See *Glycine & More*, 107 F. Supp. 3d 1335, 1365 (CIT 2015), *aff’d*, 880 F.3d 1335 (Fed. Cir. 2018).

²⁸⁷ See CFTG’s Case Brief at 40-42.

²⁸⁸ See, e.g., *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People’s Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 24892, 24899 (May 6, 2010) (unchanged in *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 59217 (September 27, 2010)); see also *AMS Assocs. v. United States*, 719 F.3d 1376, 1379 (Fed. Cir. 2013) (*AMS*) (citing *Sigma Corp. v. United States*, 117 F.3d 1401, 1405 (Fed. Cir. 1997)).

²⁸⁹ See *AMS*, 719 F.3d at 1379.

²⁹⁰ 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*).

²⁹¹ See *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*).

²⁹² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 2159, 2160 (February 6, 2019).

²⁹³ See *NMGGC I*, 352 F. Supp. 3d at 1306-12; see also *NMGGC II* 953 F.3d at 1369-72; and *CFTG AR22 II*, No. 18-137, slip op. 20-127 at 5-6.

appropriately rescinded its administrative review of the companies requested by the CFTG and Roots Farm. For all of the foregoing reasons, Commerce properly determined that the companies for which the CFTG requested a review were not required to demonstrate that they were entitled to a separate rate, and Commerce appropriately did not deem them part of the country-wide entity.

Comment 6: Whether Commerce Exceeded its Authority to Combine Reviews

CFTG's Case Brief

- The issues in AR 21 are not related to AR 22. Only one member of the NMGGC (AR 21) participated in AR 22, Mr. Crawford.²⁹⁴
- Once information from prior reviews is discredited, Commerce may not refer back to that information. Furthermore, if the information is no longer relevant, such as whether Ms. Sanford produced her 2015 tax return, the information does not raise credibility issues and is irrelevant to whether she has standing to file a review request in AR 24.²⁹⁵
- Commerce's preliminary decision concerning the CFTG is arbitrary and capricious, as it runs counter to the evidence before the agency.²⁹⁶
- "Commerce improperly ascribed evidence from prior segments to AR 24 without identifying why the conditions in the earlier segments apply to this segment." The Federal Circuit has noted the importance of not assuming that the facts remain the same from one period to another.²⁹⁷
- Commerce appears to suggest that it is less important to use contemporaneous data in ARs than in investigations because in ARs, prior period data is available. However, the availability of prior information does not provide a basis for using non-contemporaneous data in each AR.²⁹⁸

Petitioners' Rebuttal Brief

- Commerce properly considered relevant information that was timely placed on the record of this segment.²⁹⁹
- Additionally, the CIT has already "rejected a similar argument by the CFTG asserting that the Federal Circuit's decision in {*Albemarle*} precludes {Commerce} from considering factual findings reached in a prior segment in a subsequent segment."³⁰⁰

Harmoni's Rebuttal Brief

²⁹⁴ See CFTG's Case Brief at 39.

²⁹⁵ *Id.*

²⁹⁶ *Id.* (citing *Motor Vehicle Manufacturing Association v. State Farm Mutual*, 463 US 29 (1983)).

²⁹⁷ *Id.* at 40 (citing 19 CFR 351.102(b)(47) (defining "segment of the proceeding"); *Albemarle*, 821 F.3d at 1345; *Shandong Huarong Mach. Co. v. United States*, 29 CIT 484, 490-91 (CIT 2005); *Allegheny Ludlum Corp. v. United States*, 346 F.3d 1368, 1373 (Fed. Cir. 2003) (*Allegheny Ludlum*); and *Freeport Minerals Co. (Freeport McMoran, Inc.) v. United States*, 776 F.2d 1029, 1032 (Fed. Cir. 1985)).

²⁹⁸ *Id.*; see also *Preliminary Results*, PDM at 5.

²⁹⁹ See *Petitioners' Rebuttal Brief* at 39-40

³⁰⁰ *Id.* at 40 (citing *CFTG AR22 II*, 437 F. Supp. 3d at 1360 (citing *Albemarle*, 821 F.3d at 1356-67)).

- Commerce has the authority to consider the conduct of the CFTG’s members in ARs 21 and 22 in analyzing the CFTG’s credibility in this segment.³⁰¹
- The CFTG claims that the information upon which Commerce relied in rescinding ARs 21 and 22 was either discredited or no longer relevant, are wrong and should be rejected.³⁰²
- The CIT and the Federal Circuit have affirmed Commerce’s determination in AR 21.³⁰³
- “In AR20, AR21, and AR22, Mr. Crawford and his attorney, Mr. Hume, had a close business relationship with the QTF Entity. In AR21 and AR22 Mr. Crawford consistently misrepresented the significance of this relationship. . . These misrepresentations continued in AR24.”³⁰⁴
- “Mr. Crawford’s motivation for misleading {Commerce} in prior reviews is directly relevant to his responses to {Commerce’s} questionnaire in AR24.”³⁰⁵
- The “continuation of the CFTG’s pattern of misrepresentations and omissions in support of Mr. Hume’s decade old quest to ‘get the DOC to go after Harmoni, ‘ coupled with the facts that CFTG members are not for-profit commercial farmers, with legitimate, independent business reasons to request a review of Harmoni. . . compels a conclusion that the CFTG review request should be rejected.”³⁰⁶

Commerce’s Position: We note that all the information on which we based our determination to rescind the review on the companies for which the CFTG and Roots Farm requested a review is on the record of the instant review. Furthermore, the Federal Circuit has confirmed that where Commerce “has determined a review request is illegitimate *ab initio*, the requesting entity’s standing to participate in the review ‘has been rendered null and void.’”³⁰⁷ Since the CFTG “stands in the shoes of a party who failed to participate in the administrative review,”³⁰⁸ Commerce is not required to address the CFTG’s arguments concerning this issue.

Nevertheless, because this argument touches upon our decision to find the CFTG’s review request invalid, we will make the following points. We find that Commerce has not relied on prior determinations in arriving at the determinations in its instant reviews. Furthermore, Commerce has a longstanding practice of treating each segment of its proceedings as independent with separate records.³⁰⁹ First, as explained above, Commerce stated in the *Preliminary Results* that “the fact pattern of the instant administrative review mirrors that of two prior review – the 21st and 22nd administrative reviews – and accordingly, the prior reviews provide context to the analysis of the CFTG’s standing and credibility.”³¹⁰ Moreover, record evidence from prior administrative reviews has been submitted by parties, including the CFTG,

³⁰¹ See Harmoni’s Rebuttal Brief re CFTG at 92 (citing *Dongtai Peak Honey Indus. Co. v. United States*, 777 F.3d 1343, 1352 (Fed. Cir. 2015); and *CFTG AR22 II*, 437 F. Supp. 3d at 1360 (Commerce is not “barred from considering prior events for purposes of examining credibility in this review.”)).

³⁰² *Id.* at 92-93.

³⁰³ *Id.* at 94.

³⁰⁴ *Id.* at 95-96.

³⁰⁵ *Id.* at 96.

³⁰⁶ *Id.* at 96-97.

³⁰⁷ See *NMGGC II*, 953 F.3d at 1373.

³⁰⁸ *Id.*

³⁰⁹ See *E.I. Dupont*, 22 C.I.T. at 32.

³¹⁰ See *Preliminary Results*, PDM at 8.

on the record of the instant review.³¹¹ The CIT has already rejected the CFTG’s arguments concerning *Albemarle*.³¹²

Specifically, the CFTG states that “{t}here was no information pertinent to AR 22 regarding direction from or payment by any Chinese entity,” and, “{t}he only emails or other communications between China and {Hume and Associates} predate the departure of Ms. Medina in November 2016.”³¹³ It also states that it “find{s} no email identified on page 9 of the PDM (several email communications between 2010 and 2017).”³¹⁴ First, Commerce observes that the CFTG has not specified which evidence or information it believes Commerce has relied on from prior administrative records or reviews. It states only that there “was no information pertinent to AR 22 regarding direction from or payment by any Chinese entity.”³¹⁵ Second, the CFTG refers to emails that Commerce allegedly relied on in its PDM at page 9. However, page 9 of Commerce’s PDM merely relayed the facts of the 21st administrative review for context.³¹⁶ It does not rely on evidence from these prior reviews for purposes of a determination.³¹⁷

Finally, the CFTG states that “{o}nce information in prior reviews is discredited, Commerce cannot refer back to that information” and specifically cites to Commerce’s finding that Ms. Sanford did not produce her 2015 tax return.³¹⁸ However, Commerce never relied on Ms. Sanford’s failure to produce her 2015 tax return as evidence of misrepresentations in this administrative review. We only stated that Ms. Sanford failed to provide her 2015 tax returns for purposes of the 22nd administrative review for context.³¹⁹ Because the CFTG has not identified any evidence that Commerce relied on from prior administrative reviews in this proceeding, and all the instances it alleges do not pertain to Commerce’s determination in the instant review, we conclude that Commerce did not combine separate administrative reviews of this proceeding in contradiction of its longstanding practice.

Comment 7: Whether the Petitioners’ and Harmoni’s Relationship Reveals Fraudulent Activity

CFTG’s Case Brief

- The FGPA and Harmoni are affiliated pursuant to section 771(33) of the Act. The SAA states: “In appropriate circumstances, Commerce and the Commission may exclude a domestic producer of a like product from the industry where the producer is itself related

³¹¹ See, e.g., Harmoni’s February 14, 2019 Letter; see also Harmoni’s March 26, 2019 Letter; CFTG’s Letters, “24th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China – the Zhengzhou Harmoni Section A Response filed in the 22 AR submitted on behalf of the Coalition for Fair Trade in Garlic,” dated August 12, 2019; “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 (CFTG’s June 13, 2019 Letter); CFTG’s May 22, 2019 Letter; and CFTG’s April 16, 2019 Letter.

³¹² See *CFTG AR22 II*, 437 F. Supp. 3d at 1360 (citing *Albemarle*, 821 F.3d at 1356-67).

³¹³ See CFTG’s Case Brief at 39.

³¹⁴ *Id.* at 39 and n.81.

³¹⁵ *Id.* at 39.

³¹⁶ See *Preliminary Results*, PDM at 9.

³¹⁷ *Id.*

³¹⁸ See CFTG’s Case Brief at 39.

³¹⁹ See *Preliminary Results*, PDM at 10-11; see also CFTG’s Prelim Credibility Analysis Memo at 3-4.

to exporters or importers, or where the producer is itself an importer of the subject merchandise.”³²⁰

- The United States International Trade Commission (ITC) addressed Christopher Ranch as an importer of Chinese garlic in its 1994 report: “although no party to this investigation has argued that any producer should be excluded from the domestic industry as a related party, . . . A&D Christopher Ranch reported importing Chinese garlic for sale to various customers and for use as seed stock. Based on these importations, we find Christopher Ranch to be a related party.”³²¹
- In an NPR interview, Mr. Christopher stated that “about 6 percent of its garlic is bought from China.”³²²
- The interview was meaningful as “Mr. Christopher confirms why Christopher Ranch and Harmoni have been gaming the system. . . We believe Commerce needs to examine if there is inappropriate influence being applied. . . The statements by Ken Christopher. . . confirm that without” access to Harmoni’s garlic imports, Christopher Ranch could not survive in the garlic business.³²³
- Since the FGPA did not certify its request for review and provided no evidence that any member produced or wholesaled any garlic during the POR, “Commerce knows little about the FGPA.” Further, since the FGPA opposes the CFTG, Commerce “should disregard the FGPA completely. The FGPA should be considered, essentially, a non-domestic interested party entity under AD law because of their ties to foreign exports.”³²⁴
- The petitioners’ review request was invalid, not credible, and was a sham. It is “unclear why the petitioners’ desired Commerce to review the particular exporters or producers – because ‘cash deposits of estimated antidumping duties required on such entries understate the actual assessable antidumping duties owed’?”³²⁵
- The petitioners’ counsel did not include a company certification to attest to the fact that the FGPA had standing to file the review request. “Does Commerce presume the FGPA has standing because it had standing in the past? . . . Each review is separate. On its face, the FGPA 24 AR request is invalid.”³²⁶
- It is clear from the history of the ARs that the petitioners did not want Harmoni to be reviewed. “The FGPA is entitled to no greater status than any other domestic interested party. . . Commerce issued no questionnaire to the FGPA.”³²⁷
- The FGPA failed to disclose the actual reason for including Harmoni in its review request. 19 CFR 351.213(b)(1) “provides that a party may request a review ‘if the requesting person states why the person desires the Secretary to review those particular exporters or producers.’ . . . At issue is the reason the FGPA is requesting Commerce review Harmoni is {sic} allow {Christopher Ranch} to withdraw the request so

³²⁰ See CFTG’s Case Brief at 68 (citing Section 771(33) of the Act).

³²¹ *Id.* at 69-70 (citing Harmoni’s February 14, 2019 Letter at Exhibit 38).

³²² *Id.* at 71 (citing 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 (CFTG’s February 27, 2019 Letter) at Attachment).

³²³ *Id.* at 71-72 (citing CFTG’s February 27, 2019 Letter at Attachment).

³²⁴ *Id.* at 72.

³²⁵ *Id.* at 73 (citing Petitioners’ November 30, 2018 Review Request at 2).

³²⁶ *Id.*

³²⁷ *Id.* at 74

{Christopher Ranch} can continue to control Harmoni’s imports of garlic and thereby support its monopoly of the U.S. garlic market.”³²⁸

- Furthermore, “{t}here is no reason for the FGPA to withdraw a review request since the Act provides how Commerce must handle every entry and every exporter.”³²⁹
- Harmoni’s review request of itself was not credible and was a sham. “Harmoni’s relationship{ } with the FGPA. . . confirm Harmoni and the FGPA improperly used the AD law to gain market share and to destroy competitors.”³³⁰
- “It is preposterous that Harmoni and the FGPA have no agreement, unless they are one entity, which allows Harmoni to import and sell in the US market millions of dollars of garlic without paying AD duties.”³³¹
- Christopher Ranch has submitted no information to rebut the claim that Harmoni and Christopher Ranch are a single entity. “Answers that ‘graze the truth’ are ‘deceitful.’”³³²
- “Commerce must invalidate the Harmoni and FGPA review request {sic} in AR 24 and pursue cases against Harmoni and the FGPA for violations of US law.”³³³
- Furthermore, “Commerce must fashion a remedy to address its concern for misuse of the law and regulations over which it has principal responsibility. . . the absence of action creates the appearance of government acquiescence in cartel formations under the guise of the AD law that Commerce has the principal responsibility to enforce.”³³⁴
- “The Act directs Commerce to assess AD duties when shipments of subject merchandise are sold to the US below normal value. The evidence confirms Harmoni’s sales in AR 24 were below normal value.”³³⁵
- “Comparing the Romanian surrogate value for garlic with Harmoni’s prices, including no costs for packing or labor, confirm {sic} massive dumping.”³³⁶
- Additionally, Harmoni provided data on the prices of imported garlic. “For US imports of fresh whole garlic. . . the price of Chinese garlic – the vast portion of which appears to have been exported by Harmoni – was \$0.71/lb. No US garlic producer can compete against the \$0.71/lb price.”³³⁷

Petitioners’ Rebuttal Brief

- The CFTG did not point to any information or record evidence “demonstrative that any FGPA member is either: (1) related to or controlled by Harmoni, or (2) an importer of the subject merchandise.”³³⁸
- The CFTG points to the ITC’s affirmative determination in the original investigation, and the ITC’s fourth sunset review of the garlic order to support its assertion that the FGPA

³²⁸ *Id.* at 75-76 (citing 19 CFR 351.213(b)(1)).

³²⁹ *Id.* at 75, n.180.

³³⁰ *Id.* at 76-77.

³³¹ *Id.* at 77 (citing Harmoni’s December 23, 2019 SQR at 8).

³³² *Id.* (citing CFTG’s June 13, 2019 Letter at 5 (citing *In re Shorter*, 570 A.2d 760, 768 (D.C. 1990))).

³³³ *Id.* at 78.

³³⁴ *Id.*

³³⁵ *Id.* at 79.

³³⁶ *Id.* (citing Harmoni’s July 11, 2019 CDQR).

³³⁷ *Id.* at 80 (citing Harmoni’s October 11, 2019 Letter at Exhibits 1 and 2).

³³⁸ *See* Petitioners’ Rebuttal Brief at 41.

is an importer of subject merchandise. The ITC “did not exclude any domestic producer as a related party in either determination.”³³⁹

- The CFTG’s arguments that the petitioners’ review request was “invalid, not credible, and was a sham,” are wrong and make no sense.³⁴⁰
- The petitioners specified individual exporters and producers, and clearly stated why they should be reviewed. Finally, “as no new factual information accompanied {the petitioners’} review request, no company certification was submitted, consistent with {Commerce’s} regulations.”³⁴¹

Harmoni’s Rebuttal Brief

- This issue is not relevant as to whether Commerce should rescind the CFTG’s request to review Harmoni. Since the Federal Circuit declined to consider NMGGC’s arguments that were not relevant to Commerce’s credibility analysis, Commerce should apply the same principle here.³⁴²
- “There does not exist a scintilla of record evidence supporting the CFTG’s claim that Harmoni and the FGPA are affiliated parties. . . Harmoni sells its Chinese garlic to hundreds of customers in the United States. None of the indicia of affiliation in section 771(33) of the Act apply to the FGPA and Harmoni.”³⁴³
- Commerce “has never exempted Harmoni from reviews; rather, it has found that review requests submitted by Mr. Hume on behalf of the NMGGC and CFTG were not credible.”³⁴⁴
- Additionally, both Mr. Katz and Mr. Crawford have stated that their garlic did not compete with imported Chinese garlic.³⁴⁵

Commerce’s Position: The Federal Circuit has confirmed that where Commerce “has determined a review request is illegitimate *ab initio*, the requesting entity’s standing to participate in the review ‘has been rendered null and void.’”³⁴⁶ Since the CFTG “stands in the shoes of a party who failed to participate in the administrative review,”³⁴⁷ Commerce is not required to address the CFTG’s arguments concerning whether Harmoni and the FGPA are affiliated, whether the FGPA’s or Harmoni’s request to review Harmoni was “invalid,” credible, or a “sham,” the extent of Harmoni’s potential antidumping duties if it were reviewed, or allegations regarding Harmoni’s finances.³⁴⁸

³³⁹ *Id.* at 41-42 (citing *Fresh Garlic from China* USITC Pub. 2825 (Final) (November 1994) at I-19; and *Fresh Garlic from China*, USITC Pub. 4735 (Fourth Review) (October 2017) at 8).

³⁴⁰ *Id.* at 42-43 (citing CFTG’s Case Brief at 73-76).

³⁴¹ *Id.* at 43 (citing 19 CFR 351.213(b)(1); and 19 CFR 351.303(g)).

³⁴² See Harmoni’s Rebuttal Brief re CFTG at 101.

³⁴³ *Id.*

³⁴⁴ *Id.* at 97.

³⁴⁵ *Id.* at 98 (citing Harmoni’s February 14, 2019 Letter at Document 33; Katz’s February 21, 2017 Letter at 3, and Document 2; Harmoni’s March 29, 2016 Letter at Exhibit 3).

³⁴⁶ See *NMGGC II*, 953 F.3d at 1373.

³⁴⁷ *Id.*

³⁴⁸ See CFTG’s Case Brief at 68 to 80.

Comment 8: Whether Commerce Should Pursue an 18 U.S.C. 1001 Case Against Ms. Medina

CFTG's Case Brief

- 18 U.S.C. 1001 “makes it a crime to: (1) knowingly and willfully; (2) make any material false, fictitious or fraudulent statement or representation; (3) in any matter within the jurisdiction of the executive, legislative or judicial branch of the United States.”³⁴⁹
- A false statement is actionable if it is made “‘within the jurisdiction’ of the federal agency.”³⁵⁰
- A material falsehood is a statement that has the “‘natural tendency to influence or {is} capable of influencing, the decision of the decision making body to which it is addressed.’”³⁵¹
- The evidence on the record of this review is compelling that Ms. Medina’s declaration constituted a crime under 18 U.S.C. 1001.³⁵²
- Ms. Medina “supplied information to Commerce that she knew was false. . . {and those statements} were material to Commerce’s final decision in AR 21 and cited by Commerce in the AR 24 preliminary determination {sic}.”³⁵³
- All parties were required to acknowledge that “Title 18 U.S. Code is directly applicable to this review.”³⁵⁴
- “The CFTG provided substantial evidence that Ms. Medina filed false sworn statements with Commerce during AR 21. Harmoni, with knowledge that the statements contained false statements, placed the same statements on the AR 24 record.”³⁵⁵
- “The emails that Harmoni placed on the AR 21 record were filed with Commerce just after {Ms.} Medina was fired. . . and no emails were filed dated {sic} after her dismissal.”³⁵⁶
- There can be no doubt that Ms. Media gave the H&A emails and other documents to Harmoni. “Why else would Harmoni agree to support her and expend time, energy, and resources to protect her.”³⁵⁷
- “It remains curious that Harmoni continues to expend so much time and effort and money to defend Ms. Medina. If she did not commit the offense she has been charged with then she would not need any defense.”³⁵⁸
- “The circumstances of Ms. Medina’s connections with Harmoni’s counsel require Commerce to questions {sic} counsel further. The process needs to begin by Commerce

³⁴⁹ See CFTG’s Case Brief at 82.

³⁵⁰ *Id.* (citing *United States v. Yermian*, 468 U.S. 63, 69 (1984)).

³⁵¹ *Id.* at 83 (citing *United States v. Gaudin*, 515 U.S. 506, 510 (1995)).

³⁵² *Id.*

³⁵³ *Id.*

³⁵⁴ *Id.* at 83-84 (citing 19 CFR 351.303(g)(1)).

³⁵⁵ *Id.* at 84.

³⁵⁶ *Id.*

³⁵⁷ *Id.* at 85.

³⁵⁸ *Id.* at 86 (citing 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 the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China,” dated June 5, 2019).

releasing for the public record the emails in Exhibit C of Harmoni’s 12/7/2017 submission, refiled by Harmoni on {this} record.”³⁵⁹

Harmoni’s Rebuttal Brief

- This issue is not relevant as to whether Commerce should rescind the CFTG’s request to review Harmoni. Since the Federal Circuit declined to consider NMGGC’s arguments that were not relevant to Commerce’s credibility analysis, Commerce should apply the same principle here.³⁶⁰
- Commerce “did not rely on any information submitted by Ms. Medina in its decisions in AR21 and AR22, and the statements of Mr. Katz as to the NMGGC’s actions in AR21 have withstood the test of time.”³⁶¹
- The CFTG has failed to provide substantial evidence to impugn Mr. Katz’s credibility.³⁶²

The petitioners did not comment on this issue.

Commerce’s Position: We note that we did not rely on any information submitted by Ms. Medina in making our decision in this review, and, as stated in prior administrative reviews of this Order, Commerce “does not have the authority to enforce the criminal laws of the United States.”³⁶³ Furthermore, the Federal Circuit, has confirmed that where Commerce “has determined a review request is illegitimate *ab initio*, the requesting entity’s standing to participate in the review ‘has been rendered null and void.’”³⁶⁴ Since the CFTG “stands in the shoes of a party who failed to participate in the administrative review,”³⁶⁵ Commerce is not required to address the CFTG’s arguments concerning this issue.

Comment 9: Whether Harmoni and the FGPA Conspired to Defraud the United States

CFTG’s Case Brief

- 18 U.S.C. 371 prescribes, in part: “If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof. . . each shall be fined under this title or imprisoned not more than five years, or both.”³⁶⁶
- The Supreme Court “has clarified the two principal aspects of {this law’s} application as either: Obstructing or Impairing Legitimate Government Activity: and/or Defrauding the Government of Money or Property.”³⁶⁷

³⁵⁹ *Id.* at 86-87 (citing Harmoni’s February 14, 2019 Letter at Document VII).

³⁶⁰ *See* Harmoni’s Rebuttal Brief re CFTG at 109.

³⁶¹ *Id.*

³⁶² *Id.*

³⁶³ *See, e.g., Fresh Garlic from the People’s Republic of China: Final Results and Partial Rescission of the 21st Antidumping Duty Administrative Review; 2014-2015*, 82 FR 27230 (June 14, 2017) (*Garlic 21 Final*), and accompanying IDM at Comment 1.

³⁶⁴ *See NMGGC II*, 953 F.3d at 1373.

³⁶⁵ *Id.*

³⁶⁶ *See* CFTG’s Case Brief at 87 (citing 18 U.S.C. 371).

³⁶⁷ *Id.* (citing *Hass v. Henkel*, 216 U.S. 462, 479-80 (1910); and *Hammerschmidt v. United States*, 265 U.S. 182, 188 (1924)).

- “Section 371 is not limited in purpose to protecting the government from the common-law aspects of fraud; but also reaches ‘any conspiracy for the purpose of impairing, obstructing or defeating the lawful function of any department of Government.’”³⁶⁸
- By ensuring that Harmoni’s exports are not reviewed, the FGPA ensures that the majority of Chinese garlic “comes through one exporter (Zhengzhou Harmoni) and is controlled by one group (the FGPA).”³⁶⁹
- Harmoni and the FGPA “may argue that they are merely utilizing Commerce’s own regulations, {but} 18 U.S.C. 371 makes it an offense to willfully impair a legitimate function of government, whether or not the improper acts or objective are criminal under another statute.”³⁷⁰
- “Proof that the United States has been defrauded under this statute does not require any showing of monetary or property loss.”³⁷¹
- “Commerce should take administrative actions to ensure restitution, impose specific deterrence, and promote general deterrence. Commerce should also fashion a remedy to address its concern for the misuse of law and regulations over which it has principal responsibility.”³⁷²
- If Commerce fails to do so, it will create “the appearance of government acquiescence in cartel formations under the guise of antidumping laws that it has the principal responsibility to enforce.”³⁷³

Petitioners’ Rebuttal Brief

- The CFTG has not identified “any conduct by the FGPA that satisfies either of {the criteria laid out in 18 U.S.C. 371}.”³⁷⁴
- “Contrary to {the} CFTG’s baseless and unsubstantiated assertions, {the petitioners’} actions are not indicative of an intent to ‘defraud’ the United States, but rather reflect a concerted decision to request annual administrative reviews for the broadest possible universe of Chinese respondents{, } and then narrow the focus of its request for administrative reviews to those Chinese entities that are priorities for enforcement.”³⁷⁵

Harmoni’s Rebuttal Brief

- This issue is not relevant as to whether Commerce should rescind the CFTG’s request to review Harmoni. Since the Federal Circuit declined to consider NMGGC’s arguments

³⁶⁸ *Id.* at 88 (citing Project. *Tenth Annual Survey of White Collar Crime*, 32 Am. Crim. L. Rev. 137, 379-406 (1995); *Tanner v. United States*, 483 U.S. 107, 128 (1987); and *Dennis v. United States*, 384 U.S. 855 (1966)).

³⁶⁹ *Id.*

³⁷⁰ *Id.* at 89 (citing *United States v. Tuohey*, 867 F.2d 534, 537 (Fed. Cir. 1989) (we note that the CFTG did not provide the opening quotation mark for this citation)); see also *United States v. Burgin*, 621 F.2d 1352, 1356 (Fed. Cir. 1980), *cert. denied*, 449 U.S. 1015 (1980); and *United States v. Winkle*, 587 F.2d 705, 708 (Fed. Cir. 1979), *cert. denied*, 444 U.S. 827 (1979)).

³⁷¹ See CFTG’s Case Brief at 89 (citing *United States v. Conover*, 772 F.2d 765 (Fed. Cir. 1985), *aff’d, sub. nom. Tanner v. United States*, 483 U.S. 107 (1987); *United States v. Del Toro*, 513 F.2d 656 (Fed. Cir. 1975), *cert. denied*, 423 U.S. 826 (1975); and *United States v. Jacobs*, 475 F.2d 270 (Fed. Cir. 1973), *cert. denied*, 414 U.S. 821 (1973)).

³⁷² *Id.* (citing *Glycine & More*, 107 F. Supp. 3d 1335).

³⁷³ *Id.* at 89-90 (citing *Tokyo Kikai Seisakusho, Ltd. v. United States*, 529 F. 3d 1352, 1361-62 (Fed. Cir. 2008)).

³⁷⁴ See Petitioners’ Rebuttal Brief at 44.

³⁷⁵ *Id.* at 44-45.

that were not relevant to Commerce’s credibility analysis, Commerce should apply the same principle here.³⁷⁶

- “Harmoni’s current advantageous position vis a vis other Chinese garlic exporters did not result from any wrongdoing or collusion with other parties.”³⁷⁷
- Additionally, “any legitimate ‘producer of a domestic like product’ has the right to request a review of Harmoni.”³⁷⁸

Commerce’s Position: The Federal Circuit has confirmed that where Commerce “has determined a review request is illegitimate *ab initio*, the requesting entity’s standing to participate in the review ‘has been rendered null and void.’”³⁷⁹ Since the CFTG “stands in the shoes of a party who failed to participate in the administrative review,”³⁸⁰ Commerce is not required to address the CFTG’s arguments concerning this issue.

Comment 10: Whether Roots Farm has Standing to Request an Administrative Review

Roots Farm’s Case Brief

- Commerce’s “primary rationale {in the preliminary results,} is that Roots Farm relied upon an altered invoice to demonstrate domestic-interested-party standing after acknowledging that the invoice had been altered.”³⁸¹
- Roots submitted a different invoice to supplement its standing questionnaire response.³⁸² Commerce mistook the invoice referenced by Roots Farm in determining that Roots Farm continued to rely upon an altered invoice.³⁸³
- The invoice Commerce appears to rely on was originally submitted by Roots Farm in its April 26, 2019 submission. Commerce then points to a different invoice, “that {Commerce} later appears to believe is the same invoice. . .” However, it is a different invoice that was originally submitted in Roots Farm’s May 29, 2019 submission.³⁸⁴
- Commerce then referenced an “unaltered purchase order provided by Roots Farm’s U.S. garlic supplier. . .{saying} that this purchase order contradict{s} the claims made by Mr.

³⁷⁶ See Harmoni’s Rebuttal Brief re CFTG at 108.

³⁷⁷ *Id.*

³⁷⁸ *Id.*

³⁷⁹ See *NMGGC II*, 953 F.3d at 1373.

³⁸⁰ *Id.*

³⁸¹ See Roots Farm’s Case Brief at 4; see also *Preliminary Results*, PDM at 16-17; and Memorandum, “24th Administrative Review of Fresh Garlic from the People’s Republic of China: Roots Farm’s Credibility Analysis,” dated January 8, 2020 (Roots Farm Prelim Credibility Analysis Memo) at 2-4.

³⁸² See Roots Farm’s Case Brief at 4-5 (citing Roots Farm’s Letter, “Fresh Garlic from the People’s Republic of China Antidumping Duty Administrative Review: Response to New Factual Information Submitted by Zhengzhou Harmoni Spice Co., Ltd.,” dated June 18, 2019 at 2-3 and Exhibit 2).

³⁸³ *Id.* at 5.

³⁸⁴ *Id.* at 6 (citing Roots Farm’s Letters, “Fresh Garlic from the People’s Republic of China Antidumping Duty 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) at Exhibit 4; and “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 (Roots Farm’s May 29, 2019 Letter) at Exhibit 1).

Xu. There is no contradiction. One reference is to an invoice, the other to a purchase order.”³⁸⁵

- Commerce also pointed to Roots Farm’s claim in its Standing Questionnaire Response as a repeated claim constituting material misrepresentations and inconsistencies with respect to Roots Farm’s claimed POR purchase and sale of U.S.-grown garlic. However, Roots Farm’s Standing Questionnaire Response identified four items, (1) an order for peeled garlic; (2) a “placed. . . order for US-grown garlic (which was delivered just after the POR); (3) a “generated. . . invoice for peeled U.S. garlic; and (4) “pre-payment for the shipment of U.S. grown garlic peeled by Roots Farm.”³⁸⁶
- Since “the pillar upon which {Commerce} decided Roots Farm’s credibility is based upon a mistake of fact, {Commerce} should reverse its credibility finding. The mistaken invoice subsequently submitted by Roots Farm cannot be ‘reasonably {} inferred to pervade the data’ submitted by Roots Farm in its Standing Questionnaire.”³⁸⁷
- Roots Farm was granted a “certificate of occupancy prior to beginning operations, and its certificate of occupancy was not found invalid nor was Roots Farm’s reliance on that certificate of occupancy found to violate municipal ordinances until long after the POR.”³⁸⁸
- The county court’s September 11, 2019 injunction, which was well after the POR, “should not undermine Roots Farm’s good faith reliance upon its certificate of occupancy during the POR.”³⁸⁹
- Information submitted by Harmoni supports Roots Farm’s good faith reliance. The second zoning code violation listed by Lehigh Engineering, LLC, “states, in part, ‘{t}he Office section of the facility has an Occupancy Permit.”³⁹⁰
- “The county court’s order does not indicate whether the certificate of occupancy was initially valid and later became invalid,” nor does it indicate “whether the county court’s statements about a certificate of occupancy refers to the entire facility or just that portion not included in the initial certificate of occupancy.”³⁹¹
- However, the county court’s September 11, 2019 order definitively closed Roots Farm’s doors.³⁹²
- Roots Farm relied upon the certificate of occupancy it received for a portion of its building in good faith. “Accordingly, that a county court later may have invalidated the certificate of occupancy should not call into question the veracity of Roots Farm’s submissions.”³⁹³
- Both Roots Farm and Harmoni agree that Roots Farm reported two burglaries to the police. “The difference between Roots Farm and Harmoni’s private investigator is that

³⁸⁵ *Id.*

³⁸⁶ *Id.* at 6-7.

³⁸⁷ *Id.* at 8 (citing *Contra. Ad Hoc Shrimp Trade Action Comm. v. United States*, 802 F.3d 1339, 1355-57 (Fed. Cir. 2015) (*Ad Hoc Shrimp*)).

³⁸⁸ *Id.* at 9.

³⁸⁹ *Id.*

³⁹⁰ *Id.* at 10-11 (citing 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) at Exhibits G and L).

³⁹¹ *Id.* at 11-12.

³⁹² *Id.* at 12.

³⁹³ *Id.*

Roots Farm provides direct testimony about the burglaries; Harmoni submits hearsay – a declaration explaining what he {sic} private investigator heard.”³⁹⁴

- Roots Farm never claimed to have reported burglaries in which its computer equipment, company safe, sales documents, hidden security cameras, and surveillance video were stolen.³⁹⁵
- Commerce “has chosen to believe hearsay and misdirection over direct testimony about the burglaries. Given that the first two rationales for Commerce’s questioning the veracity of Roots Farm’s {sic} are the product of mistake {sic} of fact and the result of overlooking specific factual evidence submitted by both Roots Farm and Harmoni, {Commerce’s} decision to believe hearsay over direct testimony should be reversed.”³⁹⁶

Petitioners’ Rebuttal Brief

- The CAFC has confirmed Commerce’s “authority to protect the integrity of its proceedings by rejecting a review request as illegitimate *ab initio* where the party filing the review request has made material misrepresentations.”³⁹⁷
- Therefore, Root Farm’s “submission of an altered document is relevant to its standing, regardless of whether {Roots Farm} supplied any other information.”³⁹⁸
- Commerce correctly “determined that the material misrepresentations and inconsistencies in {Roots Farm’s} submissions undermined {Roots Farm’s} credibility, and therefore ‘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.’”³⁹⁹
- Roots Farm “knowingly submitted an altered document to {Commerce} in support of its claim to be a domestic producer of fresh garlic during POR 24. . . Given the serious nature of this misconduct, {Commerce} is well within its authority to protect the integrity or {sic} its proceedings to continue to reject {Roots Farm’s} review request as illegitimate *ab initio*.”⁴⁰⁰
- Commerce should reject Roots Farm’s request to consider other record evidence concerning Roots Farm’s status as a domestic producer.⁴⁰¹
- However, Commerce preliminarily relied upon two other examples of material misrepresentations and inconsistencies to determine that Roots Farm lacks credibility.⁴⁰²
- One of such examples is Commerce’s reasonable reliance “on a Court order and other official documents notifying {Roots Farm} that its operation of its facility was in

³⁹⁴ See Roots Farm’s Case Brief at 13; see also 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 the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China,” dated October 11, 2019 at Exhibit 1.

³⁹⁵ See Roots Farm’s Case Brief at 13-14.

³⁹⁶ *Id.* at 14.

³⁹⁷ See Petitioners’ Rebuttal Brief at 46 (citing *NMGCC II*, 953 F.3d at 1370-71).

³⁹⁸ *Id.* at 46.

³⁹⁹ *Id.* (citing *Preliminary Results*, PDM at 20).

⁴⁰⁰ *Id.* at 48.

⁴⁰¹ *Id.* at 49.

⁴⁰² See Petitioners’ Rebuttal Brief at 49.

violation of the Uniform Construction Code of Pennsylvania, including operating without a valid certificate of occupancy.”⁴⁰³

- Commerce, as the finder of fact in this segment, “may weigh the evidence submitted and determine what to credit, and what not to credit.”⁴⁰⁴
- Taking Roots Farm’s material misrepresentations and inconsistencies in this segment, “it is perfectly reasonable for {Commerce} to credit the testimony of a private investigator over {Roots Farm’s} own testimony.”⁴⁰⁵

Harmoni’s Rebuttal Brief

- Roots Farm’s “attempt to distinguish its situation from the one described in *Ad Hoc Shrimp* is preposterous{. . . {Roots Farm} deliberately withheld information, misrepresented information and even more egregiously submitted an altered document that was clearly relevant to its claim of standing.”⁴⁰⁶
- “The altered invoice is not the only evidence that impugned the credibility of {Roots Farm’s} claim {sic} standing as a domestic producer, but it is certainly the most damning and by itself is sufficient to support {Commerce’s} credibility analysis.”⁴⁰⁷
- Roots Farm claimed that, in POR 24, it purchased domestic garlic bulbs intended to be used for its Pine Grove warehouse peeling operation, as evidenced by the proffered invoice.⁴⁰⁸
- Harmoni responded that “in order to make it appear relevant to their POR 24 standing claim, {Roots Farm} altered a material part of this document.”⁴⁰⁹
- Roots Farm then stated that Harmoni’s “allegations have no factual basis. . . Roots Farm has presented factually correct information to {Commerce}.”⁴¹⁰
- Additionally, Roots Farm’s counsel stated that “Roots Farm submitted the document as it was received. . . It was altered, but before Roots Farm received it.”⁴¹¹
- Harmoni’s June 6, 2019 submission shows that Roots Farm’s claim, “that it was not responsible for altering the invoice, was a lie.”⁴¹²
- “The intention of the alterations requested by {Roots Farm is} obvious – lacking any documentary proof that it used domestic garlic bulbs to produce peeled garlic in the {United States} during POR 24, . . . {Roots Farm} requested its supplier to provide an altered invoice.”⁴¹³

⁴⁰³ *Id.*

⁴⁰⁴ *Id.* at 49-50.

⁴⁰⁵ *Id.* at 50.

⁴⁰⁶ See Harmoni’s Rebuttal Brief re Roots Farm at 5; see also *Ad Hoc Shrimp*, 992 F. Supp. 2d at 1293.

⁴⁰⁷ See Harmoni’s Rebuttal Brief re Roots Farm at 6.

⁴⁰⁸ *Id.* (citing Roots Farm’s April 26, 2019 Letter at 8 and Exhibit 4).

⁴⁰⁹ *Id.* at 7 (citing 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 May 16, 2019 Letter)).

⁴¹⁰ *Id.* at 7 (citing Roots Farm’s May 29, 2019 Letter at 2).

⁴¹¹ *Id.* (citing Roots Farm’s May 29, 2019 Letter at 3 and 6).

⁴¹² *Id.* at 7; see also 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 (Harmoni’s June 6, 2019 Letter).

⁴¹³ See Harmoni’s Rebuttal Brief re Roots Farm at 9.

- In its standing questionnaire response, Roots Farm “based its claim to be a domestic interested party on the very same purchase. . . that is the subject of the altered invoice.”⁴¹⁴
- The record shows that Roots Farm “lied multiple times regarding its sole claimed purchase of domestic garlic. It continuously attempted to subvert {Commerce’s} fact finding inquiry in POR 24, by causing the invoice to be altered and then claiming that the garlic was ordered during the POR but only became available to it after the POR due to a delay in delivery.”⁴¹⁵
- Roots points to a sale of peeled U.S. garlic during POR 24. However, “review of the purported sale. . .” reveals clear discrepancies.⁴¹⁶
- Even if those discrepancies are ignored, “this small, one-off sale of garlic. . . did not involve garlic that was in {Roots Farm’s} possession during the period, that was processed, *i.e.*, peeled, by {Roots Farm} during the period or delivered by {Roots Farm}. . . during the POR.”⁴¹⁷
- Other than that transaction, Roots Farm “has not claimed or documented a single sale of peeled garlic made from domestic garlic bulbs. Instead, it has provided copies of invoices for transactions covering the sale of peeled garlic made from imported garlic bulbs.”⁴¹⁸
- Without commenting on the bulk of Commerce’s credibility analysis, Roots Farm “chooses only to comment on the last paragraph of {Commerce’s} analysis regarding {Roots Farm’s} purported purchase and sale of garlic during the POR.”⁴¹⁹
- “Rather than directly address {Commerce’s} reasonable determination that {Roots Farm’s} egregious behavior surrounding the altered invoice is disqualifying, {Roots Farm} tries to divert attention away from the substantial volume of un rebutted record evidence of its wrongdoing by accusing {Commerce} of confusing two different transactions.”⁴²⁰
- Even if Commerce confused the two invoices, “it does not change the fact that the purported sale to. . . and purchase from. . ., which was supported by an altered invoice are inexorably tied together and that {Roots Farm} caused the. . . invoice to be altered in order to reference a date within the POR and then repeatedly attempted to mislead {Commerce} as to its involvement in the alteration and the true date and spot nature of the transaction.”⁴²¹
- Furthermore, concerning Roots Farm’s claim that there is no contradiction in the claims made by Mr. Xu,⁴²² either Roots Farm’s counsel is confused about the nature of the discrepancy Commerce cited, or he is attempting to confuse Commerce.⁴²³
- “The contradiction is that Mr. Xu claimed {Roots Farm} placed the order in October and claimed the order as a basis for {domestic interested party} standing in POR 24 which

⁴¹⁴ *Id.* at 10 (citing Roots Farm’s September 19, 2019 Standing Questionnaire Response at 2).

⁴¹⁵ *Id.* at 11.

⁴¹⁶ *Id.*

⁴¹⁷ *Id.* at 13.

⁴¹⁸ *Id.*

⁴¹⁹ *Id.* at 15.

⁴²⁰ *Id.*

⁴²¹ *Id.* at 16.

⁴²² *See* Roots Farm’s Case Brief at 6.

⁴²³ *See* Harmoni’s Rebuttal Brief re Roots Farm at 18.

ended on October 31, 2018, while {Roots Farm’s} own purchase order, . . . referenced a purchase order date. . . which was confirmed as accurate.”⁴²⁴

- Put simply, “the magnitude of {Roots Farm’s} culpable conduct gives {Commerce} sufficient reason to reject all of its submissions. Moreover, referring to its unlawful submission of altered documents as merely an ‘error’ demonstrates that {Roots Farm} has no regard for the integrity of {Commerce’s} proceedings. Finally, suggesting that it no longer relied on {the information} after being caught lying about it on three separate occasions somehow excuses what amounts to a criminal act is outlandish.”⁴²⁵
- “Whether any part of the subject transaction was accomplished in POR 24 or after, cannot cure the fact that {Roots Farm} effectively destroyed its credibility by altering a document material to the issue of whether it had standing.”⁴²⁶
- The record shows that the certificate of occupancy that Roots Farm claims it was relying on in good faith was limited to use of the office space, and Mr. Xu “admitted to the fact that he was operating without a required certificate of occupancy.”⁴²⁷
- Roots Farm argues that the injunction decision that closed Roots Farm’s doors was not made until long after the POR. However, the decision was made on September 11, 2019, which is during POR 25. Additionally, “the Court’s decision cited to facts pertinent to both POR 24 and POR 25 unlawful activity by {Roots Farm}. That does not detract from its relevance to the issue of {Roots Farm’s} credibility in POR 24.”⁴²⁸
- The Court’s injunction “clearly establishes that contrary to {Roots Farm’s} assertions regarding a prior permit, that the record shows was limited to making repairs on the office electrical system, {Roots Farm} did not have a valid certificate of occupancy and use during POR 24 that would have allowed it to use the building for business purposes which would obviously include the peeling of inventoried garlic, and that it continued to violate the building code and zoning ordinances.”⁴²⁹
- Roots Farm was repeatedly notified “that it had violated multiple ordinances and {Roots Farm} repeatedly ignored stop work orders. {Roots Farm’s} actions are those of a scofflaw who has no respect for the rule of law and, when caught, feigns ignorance despite being in business many years and receiving numerous citations.”⁴³⁰
- Roots Farm’s facility was ordered to be shut down by the local township zoning and building officials on November 30, 2017. “Even before that, on April 11, 2017, prior to POR 24, a ‘Stop Work Order, ‘. . . was posted at {Roots Farm}.”⁴³¹
- Roots Farm ignored the stop work order and continued to operate the building and accrue further violations and fines until the injunction order was issued on September 11, 2019.⁴³²
- “Although {Roots Farm} later admitted that it had no Certificate of Occupancy, that does not cure it attempt to conceal its illegal use of the Pine Grove facility from {Commerce}.

⁴²⁴ *Id.*

⁴²⁵ *Id.* at 20.

⁴²⁶ *Id.* at 21.

⁴²⁷ *Id.* at 34-35.

⁴²⁸ *Id.* at 35.

⁴²⁹ *Id.* at 38.

⁴³⁰ *Id.* at 40.

⁴³¹ *Id.* at 43.

⁴³² *Id.* at 43-47.

Indeed, based upon counsel’s factual assertions, {Roots Farm} still claims to have had a valid certificate of occupancy, despite the overwhelming evidence to the contrary and also claims that it acted ‘in good faith.’”⁴³³

- Record evidence shows that at all times and up to the submission of its case brief, Roots Farm “has tried to mislead {Commerce} and has made false claims with respect to actions pertaining to the issue of whether or not it had a Certificate of Occupancy that allowed it to make full use of the Pine Grove facility rather than merely occupy an office within the facility.”⁴³⁴
- Roots Farm “contends that if it claims that it reported thefts, without any evidentiary support, including at a minimum, an incident report filed with the police or an insurance claim reporting the allegedly stolen items (*e.g.*, computer and company files), {Commerce} should accept its conclusions even though local police contradicted {Roots Farm’s} claims.”⁴³⁵
- Roots Farm would like Commerce to believe that “it only decided to report the burglary of low value items, including ‘tools, employees’ uniforms, boots and masks, ‘ but did not report the burglary of valuable items such as the company safe, sales documents, computer equipment, Customs/import documents, sales records, paper copies of the Incident Reports, hidden security cameras, surveillance video saved locally, *etc.* This contention is clearly not credible and there is substantial evidence on the record to conclude otherwise.”⁴³⁶
- Roots Farm did not submit any evidence to support its claim of additional burglaries, however, “throughout POR 24, {Roots Farm} has attempted to excuse its lack of credible records of production and sales based upon the alleged burglaries that, among other items, resulted in loss of its computer and hard copy business files. . . these burglary claims were a sham.”⁴³⁷
- The multiple instances of Roots Farm using its “burglary excuse to avoid responding to a question or providing requested documentation made the credibility of this excuse highly relevant to {Commerce’s} analysis.”⁴³⁸
- The records claimed stolen by Roots Farm were never reported to the police, thus, Commerce “is justified in concluding either that the records do exist, but are being withheld, or that the records never existed.”⁴³⁹
- “The false burglary information provided by {Roots Farm} in sworn declarations constitutes an extremely serious misrepresentation linked to its inability to provide complete and accurate responses to {Commerce’s} questions, fully justifying {Commerce’s} conclusion that none of {Roots Farm’s} submissions” are reliable.⁴⁴⁰

⁴³³ *Id.* at 49.

⁴³⁴ *Id.* at 50.

⁴³⁵ *Id.* at 24.

⁴³⁶ *Id.* at 24-25.

⁴³⁷ *Id.* at 25-26.

⁴³⁸ *Id.* at 28.

⁴³⁹ *Id.*

⁴⁴⁰ *Id.* at 32.

Commerce’s Position: We continue to find that record evidence casts doubt upon Roots Farm’s credibility, and that Roots Farm’s material misrepresentations, inconsistencies, and deficiencies, call into question the credibility of all of Roots Farm’s submissions in this administrative review.

First, 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.⁴⁴¹ In a subsequent submission, Roots Farm reaffirmed its claim that “Roots Farm grew, purchased, processed, and sold U.S. grown garlic during the POR,” referring to the invoices submitted on April 26, 2019.⁴⁴² On May 16, 2019, and May 29, 2019, Harmoni alleged that the invoice provided by Roots Farm was altered.⁴⁴³ Additionally, on June 6, 2019, Harmoni submitted the original, unaltered, invoice.⁴⁴⁴ Roots Farm also admitted that the invoice it provided to Commerce was altered.⁴⁴⁵ As we stated in the *Preliminary Results*, “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.’”⁴⁴⁶

Roots Farm admitted that the invoice it provided to Commerce to prove that it was a domestic interested party – and for which it certified accuracy – was altered. The intentional submission of an altered document to Commerce, along with false certification that the information was “accurate and complete to the best of {Roots Farm’s} knowledge,” constitutes a misrepresentation that undermines Roots Farm’s credibility.⁴⁴⁷

Additionally, in the *Preliminary Results*, Commerce determined that, because Roots Farm knew of violations before it asserted that it “conducted its operations with appropriate certificates, or permissibly with applications pending, and has applied for additional certificates as its operations grew” and “lawfully operates its garlic production business,” Roots Farm repeated material misrepresentations and inconsistent statements on the record of the instant administrative review. Specifically, Roots Farm claimed to be operating in full compliance with applicable regulations and ordinances, amid contradictory record evidence, calling into question the veracity of its submissions. Additionally, despite Roots Farm’s arguments concerning whether it was granted an occupancy permit, the record indicates that during the entirety of the POR, Roots Farm did not have a valid certificate of occupancy. As pointed out in the *Preliminary Results*,

⁴⁴¹ See Roots Farm’s April 26, 2019 Letter at 8 and Exhibit 4.

⁴⁴² See Roots Farm’s May 29, 2019 Letter at 2-3, and 4; see also Roots Farm’s April 26, 2019 Letter at 8.

⁴⁴³ See Harmoni’s May 16, 2019 Letter at 20-21; see also Harmoni’s May 29, 2019 Letter at 1-3.

⁴⁴⁴ See 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 the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China,” dated June 6, 2019.

⁴⁴⁵ See Roots Farm’s May 29, 2019 Letter at 3 (“Harmoni’s allegation . . . state{s} the obvious, but miss {sic} the relevant question: when. Roots Farm submitted the document as it was received, and will submit additional information on this point when it is available.”).

⁴⁴⁶ See *Preliminary Results*, PDM at 17; see also Roots Farm’s Prelim Credibility Analysis Memo at 2-4 for the BPI discussion of this issue.

⁴⁴⁷ See Harmoni’s June 6, 2019 Letter at 5; see also *Preliminary Results*, PDM at 16-17; and Roots Farm’s Preliminary Credibility Analysis Memo at 2-4.

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.⁴⁴⁸

Thus, Commerce determines that Roots Farm’s claim, in its case brief, that it was granted a “certificate of occupancy prior to beginning operations, and its certificate of occupancy was not found invalid nor was Roots Farm’s reliance on that certificate of occupancy found to violate municipal ordinances until long after the POR,”⁴⁴⁹ is a misrepresentation.⁴⁵⁰ To be clear, Commerce does not intend to suggest that a company or an individual’s noncompliance with local regulations and ordinances necessarily disqualifies that company or individual from domestic interested party status, pursuant to section 771(9)(C) of the Act. Rather, Roots Farm’s material misrepresentations and inconsistent statements regarding its claims to be operating in full compliance with applicable regulations and ordinances, including in its case brief, amid contradictory record evidence, in addition to the other material misrepresentations on the record, call into question the veracity of Roots Farm’s submissions.

We disagree with Roots Farm’s arguments concerning the burglaries.⁴⁵¹ Roots Farm argues that although it reported two burglaries, it “never claimed to have reported subsequent burglaries” in which its computer equipment, company safe, sales documents, hidden security cameras, and surveillance video were stolen.⁴⁵² In its standing questionnaire response, in reply to Commerce’s sixteenth question,⁴⁵³ Roots Farm stated, “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.”⁴⁵⁴

Commerce determines that it did not “overlook { } specific factual evidence submitted by both Roots Farm and Harmoni,” or “believe hearsay over direct testimony.”⁴⁵⁵ Rather, Commerce has determined that due to misrepresentations on the record, it cannot rely on the entirety of Roots Farm’s submitted information. Commerce has not evaluated whether the requested information was in fact stolen. While Commerce is skeptical of Roots Farm’s failure to report additional burglaries, after reporting one on June 12, 2017, and another on September 17th to

⁴⁴⁸ See *Preliminary Results*, PDM at 18; see also Harmoni’s April 8, 2019 Letter at Exhibits G to I and Exhibits L to M; and Roots Farm’s May 6, 2019 Letter at Attachment 2, Exhibit B.

⁴⁴⁹ See Roots Farm’s Case Brief at 9.

⁴⁵⁰ See Harmoni’s April 8, 2019 Letter at Exhibits G to I and Exhibits L to M.

⁴⁵¹ See Roots Farm’s Case Brief at 13-14.

⁴⁵² *Id.* at 13-14.

⁴⁵³ In question sixteen Commerce asked Roots Farm, “[i]f {it} or any {of its} affiliates company{ies} purchased fresh garlic from the QTF-Entity . . . during the period covered by PORs 19-24, please provide the total quantity of such garlic purchased and the copies of all orders, invoices and payment records for such purchases, identifying the payee and amounts of payments made, including any amounts paid to third parties for such garlic.” Roots Farm’s September 19, 2019 Standing Questionnaire Response at 24.

⁴⁵⁴ See Roots Farm’s September 19, 2019 Standing Questionnaire Response at 25.

⁴⁵⁵ See Roots Farm’s Case Brief at 14.

18th, 2017, to Pennsylvania Highway Patrol,⁴⁵⁶ it observes that Roots Farm failed to provide information that Commerce requested in its standing questionnaire.⁴⁵⁷ Thus, Commerce determines that this failure in combination with other misrepresentations described above, and in the *Preliminary Results*, casts further doubt on Roots Farm’s credibility.

As we continue to find that Roots Farm made misrepresentations and submitted contradictions on Commerce’s record, including within its standing questionnaire response, we continue to find that we cannot rely on the entirety of Roots Farm’s submitted information, including its purported garlic production information.⁴⁵⁸ Therefore, Commerce finds that Roots Farm has failed to demonstrate that it is a domestic interested party. Accordingly, Commerce continues to determine Roots Farm’s review request to be invalid *ab initio*.

Comment 11: Whether Commerce Should Calculate a Margin for Harmoni

Roots Farm’s Case Brief

- “Roots Farm submitted its request for a review of Harmoni for a valid purpose and provided enough information to demonstrate its domestic-interested-party status. . . {Commerce} should recognize the invalidity of its credibility finding for Roots Farm and determine a margin for Harmoni.”⁴⁵⁹

Harmoni’s Rebuttal Brief

- “The record fully supports {Commerce’s} affirmance of its preliminary results, any arguments that do not address credibility are not germane to the issues facing {Commerce}.”⁴⁶⁰
- The Federal Circuit has clarified that if Commerce “determines that claimed standing as a domestic interest {sic} party is null and void due to lack of credibility, the claimant is deemed not a ‘party to the proceeding, equivalent to a party who failed to participate in the administrative review, thus relieving {Commerce} of reaching decisions that are not related to standing.”⁴⁶¹

The petitioners did not comment on this issue.

Commerce’s Position: The Federal Circuit, has confirmed that where Commerce “has determined a review request is illegitimate *ab initio*, the requesting entity’s standing to

⁴⁵⁶ See Roots Farm’s April 26, 2019 Letter at Exhibit 7.

⁴⁵⁷ See Roots Farm’s September 19, 2019 Standing Questionnaire Response at 24-25.

⁴⁵⁸ Roots Farm additionally argues that Commerce should still find that Roots Farm has standing to request review because it provided additional documents in Roots Farm’s April 26, 2019 Letter supporting its assertion that it does in fact produce garlic. See Roots Farm’s Case Brief at 4-7. However, as Commerce states above, the intentional submission of an altered document to Commerce, along with false certification that the information was “accurate and complete to the best of {Roots Farm’s} knowledge,” constitutes a misrepresentation that undermines Roots Farm’s credibility with respect to all of its submissions. See Roots Farm Prelim Credibility Analysis Memo at 2-4 (providing additional analysis with respect to the alteration).

⁴⁵⁹ See Roots Farm’s Case Brief at 14-15.

⁴⁶⁰ See Harmoni’s Rebuttal Brief re Roots Farm at 51.

⁴⁶¹ *Id.* (citing *NMGGC II*, 953 F.3d at 1373).

participate in the review ‘has been rendered null and void.’”⁴⁶² Since Roots Farm “stands in the shoes of a party who failed to participate in the administrative review,”⁴⁶³ and as a result its request for an administrative review of Harmoni is invalid *ab initio*, Commerce is not required to address Roots Farm’s request for Commerce to calculate a margin for Harmoni.

VI. RECOMMENDATION

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

Agree

Disagree

11/2/2020

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

⁴⁶² See *NMGGC II*, 953 F.3d at 1373.

⁴⁶³ *Id.*